

No. 14758

United States
Court of Appeals
for the Ninth Circuit

RICHARD T. HAWLEY, Appellant,

vs.

ALASKA STEAMSHIP COMPANY, a corpora-
tion, Appellee.

Transcript of Record

Appeal from the United States District Court for the Western
District of Washington, Northern Division

FILED

AUG 30 1955

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

KANE and SPELLMAN,

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Seattle 4, Washington,

Attorneys for Appellant.

BOGLE, BOGLE & GATES, and
ROBERT V. HOLLAND,

642 Central Building,
Seattle 4, Washington,

Attorneys for Appellee.



In the District Court of the United States, Western
District of Washington, Northern Division

No. 3621—In Law

RICHARD T. HAWLEY, Plaintiff,

vs.

ALASKA STEAMSHIP COMPANY, a corpora-
tion, Defendant.

COMPLAINT

Plaintiff elects to have the above entitled cause
tried by a jury and hereby demands a jury.

Action Under Special Rule for Seaman to Sue
Without Security and Prepayment of Fees. (28
U.S.C. No. 1916)

Plaintiff, by his attorney, Joseph S. Kane, com-
plaining of the defendant, respectfully alleges:

I.

Upon information and belief that at all times
hereinafter mentioned the defendant, Alaska Steam-
ship Company, was and now is a domestic corpora-
tion existing under and by virtue of the laws of
Washington doing business as a shipowner and op-
erator of ships in the Western District of Wash-
ington, Northern Division.

II.

Upon information and belief, that at all times
hereinafter mentioned defendant chartered or op-

erated and acted as general agent for a steamship known as the M. V. Square Sinnet, operated said vessel, and was in possession and control thereof.

III.

That at all times hereinafter mentioned plaintiff was employed as wiper on said vessel by the defendant, specifically on August 21, 1953.

IV.

Said vessel was and is an American Vessel and plaintiff became a member of the crew of said vessel as aforesaid.

V.

That on or about August 21, 1953 about 8:30 a.m. plaintiff was engaged in the course of his duties in loading cargo in the lower part of number 1 hole. While plaintiff was thus engaged, through the negligence of the defendants, its agents, servants and employees, a pallet board was pushed into the pit of plaintiff's stomach pinning him between the pallet board and cases of cans. Plaintiff received a wound in the umbilical region requiring hospitalization and treatment for infection.

VI.

Injury was caused by the negligence, carelessness and recklessness of the defendant, its agents, servants and employees in swinging the pallet board so that it would strike the plaintiff while plaintiff was standing in an area from which he could not escape the impact.

VII.

That due to the injury sustained plaintiff has been unable to pursue his ordinary occupation as a seaman and has endured great pain and suffering. Plaintiff has been forced and will be forced in the future to sustain considerable expense for medical treatment and for his maintenance.

VIII.

That as a direct and proximate result of the carelessness and negligence of the defendant as aforesaid, plaintiff sustained such injuries to his person, and such injuries were directly caused by reason of the negligence of the defendant, its agents, servants, employees in that: they failed and neglected to supply the plaintiff with a safe place to work; failed to supply the plaintiff with a sufficient number of co-employees and superior officers; failed to properly instruct plaintiff in the course of his duties; failed to properly superintend and supervise the work going on at the time the plaintiff was injured; failed to promulgate and enforce proper and safe rules for the safe conduct of said work and to warn the plaintiff of impending danger.

IX.

Said injuries were not caused or contributed to by any fault or want of care on the part of the plaintiff.

X.

That as a result of said injuries plaintiff has suffered extreme pain in the past, will suffer such

pain in the future and has lost wages which he otherwise would have earned, to his total damage in the sum of \$20,000.00.

Wherefore, plaintiff prays judgment against the defendant:

(a) For personal injuries in the sum of \$20,000.00.

(b) For his costs and disbursements incurred by this action.

(c) For such other and further relief as the Court may deem just and proper.

/s/ JOSEPH S. KANE,
Attorney for Plaintiff.

Duly Verified.

[Endorsed]: Filed January 4, 1954.

[Title of District Court and Cause.]

SUMMONS WITH COMPLAINT

To the above named Defendant:

You are hereby summoned and required to serve upon Joseph S. Kane, plaintiff's attorney, whose address is 1001 Smith Tower, Seattle 4, Wn., an answer to the complaint which herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken

against you for the relief demanded in the complaint.

Date: January 4, 1954.

[Seal] MILLARD P. THOMAS,
 Clerk of Court
/s/ J. THORNBURGH,
 Deputy Clerk

Return of Service of Writ attached.

[Endorsed]: Filed January 14, 1954.

[Title of District Court and Cause.]

ANSWER

Comes Now Alaska Steamship Company, defendant herein and for answer to the complaint of the plaintiff on file herein admits, denies and alleges as follows:

I.

Answering Paragraph I, defendant admits the same.

II.

Answering Paragraph II, defendant admits the same.

III.

Answering Paragraph III, defendant admits the same.

IV.

Answering Paragraph IV, defendant admits the same.

V.

Answering Paragraph V, defendant denies the same.

VI.

Answering Paragraph VI, defendant denies the same.

VII.

Answering Paragraph VII, defendant denies the same.

VIII.

Answering Paragraph VIII, defendant denies the same.

IX.

Answering Paragraph IX, defendant denies the same.

X.

Answering Paragraph X, defendant denies the same

Further Answering the complaint of the plaintiff and by way of a First Affirmative Defense thereto, defendant alleges that if the plaintiff has been injured and/or damaged as in his complaint alleged, or at all, said injuries and/or damages were proximately caused by and contributed to by the negligence of the plaintiff in that he placed himself in a position of obvious peril and failed to withdraw from an area of hazard when he saw or in the exercise of ordinary care and caution should have seen that the pallet board was swinging in his direction.

Wherefore having fully answered the complaint of the plaintiff, defendant prays that it may be

dismissed and recover its costs and disbursements herein to be taxed.

/s/ BOGLE, BOGLE & GATES,
Attorneys for Defendant.

Duly Verified.

Acknowledgment of Service attached.

[Endorsed]: Filed January 22, 1954.

[Title of District Court and Cause.]

PRETRIAL ORDER

As the result of pretrial conferences heretofore had, whereat the plaintiff was represented by his attorneys, Kane & Spellman, and the defendant represented by its attorneys, Bogle, Bogle & Gates, the following issues of fact and law were framed and exhibits identified:

Admitted Facts.

1. That at all times hereinafter mentioned the defendant Alaska Steamship Company was and now is a domestic corporation existing under and by virtue of the laws of Washington doing business as a shipowner and operator of ships in the Western District of Washington, Northern Division.

2. That at all times hereinafter mentioned defendant chartered or operated and acted as general agent for a steamship known as the M. V. Square

Sinnet, operated said vessel and was in possession and control thereof.

3. That at all times hereinafter mentioned plaintiff was employed as wiper on said vessel by the defendant, specifically on August 21, 1953.

4. That said vessel was and is an American Vessel and plaintiff became a member of the crew of said vessel as aforesaid.

Plaintiff's Contentions.

1. That on or about August 21, 1953 about 8:30 a.m. plaintiff was engaged in the course of his duties in loading cargo in the lower part of Number 1 hold. While plaintiff was thus engaged, through the negligence of the defendants, its agents, servants and employees, a pallet board was pushed into the pit of plaintiff's stomach pinning him between the pallet board and cases of cans. Plaintiff received a wound in the umbilical region requiring hospitalization and treatment for infection.

2. That injury was caused by the negligence, carelessness and recklessness of the defendant, its agents, servants and employees in swinging the pallet board so that it would strike the plaintiff while plaintiff was standing in an area from which he could not escape the impact.

3. That due to the injury sustained plaintiff has been unable to pursue his ordinary occupation as a seaman and has endured great pain and suffering. Plaintiff has been forced and will be forced in the future to sustain considerable expense for medical treatment and for his maintenance.

4. That as a direct and proximate result of the carelessness and negligence of the defendant as aforesaid, plaintiff sustained such injuries to his person, and such injuries were directly caused by reason of the negligence of the defendant, its agents, servants, employees in that; they failed and neglected to supply the plaintiff with a safe place to work; failed to supply the plaintiff with a sufficient number of co-employees and superior officers; failed to properly instruct plaintiff in the course of his duties; failed to properly superintend and supervise the work going on at the time the plaintiff was injured; failed to promulgate and enforce proper and safe rules for the safe conduct of said work and to warn the plaintiff of impending danger.

5. That said injuries were not caused or contributed to by any fault or want of care on the part of the plaintiff.

6. That as a result of said injuries plaintiff has suffered extreme pain in the past, will suffer such pain in the future and has lost wages which he otherwise would have earned.

Defendant's Contentions

1. That if the plaintiff has been injured and/or damaged as in his complaint alleged, or at all, said injuries and/or damages were proximately caused by and contributed to by the negligence of the plaintiff in that he placed himself in a position of obvious peril and failed to withdraw from an area of hazard when he saw or in the exercise of ordi-

nary care and caution should have seen that the pallet board was swinging in his direction.

Issues of Fact

1. Was the plaintiff involved in an accident on August 21, 1953 aboard the defendant's vessel at about 8:30 a.m. while engaged in the course of his duties in loading cargo in the lower part of No. 1 hold.

2. Was the plaintiff's alleged accident of August 21, 1953 proximately caused by the negligence of the defendant.

3. Was the plaintiff guilty of contributory negligence.

Issues of Law

1. None.

Exhibits

The following exhibit will be produced at the trial by either the plaintiff or the defendant and it is agreed that it will be admitted in evidence following proper authentication by the custodian thereof:

1. All hospital records of the U. S. Public Health Service Hospital at Seattle, Washington referring to any treatment provided to the plaintiff at said hospital.

Action by the Court

1. None.

The foregoing pretrial order has been approved by the parties hereto, as evidenced by the signatures of their counsel herein, and this order is hereby entered, as a result of which the pleadings pass out of the case, and this pretrial order shall not

be amended except by agreement of the parties to prevent manifest injustice.

Dated at Seattle, Washington this 6th day of January, 1955.

/s/ WILLIAM J. LINDBERG,
U. S. District Judge.

Approved:

/s/ JOSEPH S. KANE,
/s/ JOHN D. SPELLMAN
Of Counsel,
Attorneys for Plaintiff.

/s/ BOGLE, BOGLE & GATES,
Attorneys for Defendant.

[Endorsed]: Filed January 6, 1955.

[Title of District Court and Cause.]

REQUEST FOR ISSUANCE AND
SERVICE OF SUBPOENA

Plaintiff, by his attorneys, Kane & Spellman, hereby requests the Clerk of the U. S. District Court, Western District of Washington to issue a subpoena to Jeanette Miller, medical record librarian, U. S. Public Health Service Hospital, Seattle, Washington requesting her to appear before the Honorable William Lindberg, Judge of the District Court on the 7th day of January, 1955 at 2:00 p.m. and to bring with her the records relating to treat-

ment and diagnosis administered to the plaintiff, Richard T. Hawley.

/s/ KANE & SPELLMAN,
Attorneys for Plaintiff.

[Endorsed]: Filed January 7, 1955.

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED INSTRUCTIONS
TO THE JURY

The plaintiff herewith requests that the following instructions be given to the jury.

/s/ JOSEPH S. KANE,
Attorney for Plaintiff.

Instruction No.

The plaintiff brings this action to recover damages for personal injuries which he alleges were sustained as a result of having a pallet board pushed into the pit of his stomach and being pinned between the pallet board and cases of cans as a result of which he suffered a wound in the umbilical region requiring hospitalization and treatment for infection.

Plaintiff alleges and defendant admits that the defendant, Alaska Steamship Company was and now is a domestic corporation existing under and by virtue of the laws of Washington doing business as a shipowner and operator of ships in the

Western District of Washington, Northern Division; that the defendant operated the M. V. Square Sinnet, that at all times pertinent plaintiff was employed as wiper on said vessel by the defendant, specifically on August 21, 1953, and that said vessel was and is an American vessel and plaintiff became a member of the crew of said vessel as aforesaid.

Plaintiff alleges that on or about August 21, 1953 about 8:30 a.m. plaintiff was engaged in the course of his duties in loading cargo into lower part of Number 1 hold. While plaintiff was thus engaged, through the negligence of the defendants, its agents, servants and employees, a pallet board was pushed into the pit of plaintiff's stomach pinning him between the pallet board and cases of cans. Plaintiff received a wound in the umbilical region requiring hospitalization and treatment for infection.

Plaintiff further alleges that injury was caused by the negligence, carelessness and recklessness of the defendant, its agents, servants and employees in swinging the pallet board so that it would strike the plaintiff while plaintiff was standing in an area from which he could not escape the impact.

Plaintiff further alleges that due to the injury sustained him he has been unable to pursue his ordinary occupation as a seaman and has endured great pain and suffering. Plaintiff has been forced and will be forced in the future to sustain considerable expense for medical treatment and for his maintenance.

Plaintiff further alleges that as a direct and proximate result of the carelessness and negligence

of the defendant as aforesaid, plaintiff sustained such injuries to his person, and such injuries were directly caused by reason of the negligence of the defendant, its agents, servants, employees in that; they failed and neglected to supply the plaintiff with a safe place to work; failed to supply the plaintiff with a sufficient number of co-employees and superior officers; failed to properly instruct plaintiff in the course of his duties; failed to properly superintend and supervise the work going on at the time the plaintiff was injured; failed to promulgate and enforce proper and safe rules for the safe conduct of said work and to warn the plaintiff of impending danger.

Plaintiff further alleges that said injuries were not caused or contributed to by any fault or want of care on the part of plaintiff.

Plaintiff further alleges that as a result of said injuries he has suffered extreme pain in the past, will suffer such pain in the future and has lost wages which he otherwise would have earned, all to his damage in the sum of \$20,000.00.

All of the above allegations of the plaintiff are denied by the defendant in its answer. Defendant's denial imposes upon the plaintiff the burden of proving such matters so alleged by a fair preponderance of the evidence.

The defendant also raises an affirmative defense stating that if the plaintiff has been injured and/or damaged as in his complaint alleged, or at all, said injuries and/or damages were proximately caused by and contributed to by the negligence of the

plaintiff in that he placed himself in a position of obvious peril and failed to withdraw from an area of hazard when he saw or in the exercise of ordinary care and caution should have seen that the pallet board was swinging in his direction.

Plaintiff has denied all of the allegations of the defendant's affirmative defense, which denial imposes upon the defendant the burden of proving such matters so alleged by a fair preponderance of evidence.

Instruction No.

The basis of plaintiff's cause of action is negligence. The plaintiff is not entitled to recover merely because there has been an accident, but must prove, by a preponderance of the evidence, that the defendant was negligent in the manner charged, and that defendant's negligence was the proximate cause of such injuries.

The term "proximate cause" means that cause which in a direct, unbroken sequence produces the injury complained of and without which the injury would not have happened.

The term "preponderance of evidence" means the greater weight of evidence. It is that evidence which carries the greater convincing power to your minds, regardless of the number of witnesses who may testify for one side or the other. It is that evidence which fairly turns the scales which were evenly balanced before its introduction.

The term "Burden of proof" means the burden of producing evidence which fairly preponderates over the opposing evidence.

“Negligence” is the failure to exercise reasonable and ordinary care, and by the term “reasonable and ordinary care” is meant that degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances or conditions. Negligence may consist in the doing of some act which a reasonably prudent person would not do under the same or similar circumstances and conditions. Negligence is never presumed, but must be established by proof the same as any other fact in the case.

“Contributory negligence” is negligence or want of care on the part of a person suffering injury or damage which directly and proximately contributed to cause the injuries complained of. It also may consist in doing some act which a reasonably prudent person would not have done under the same or similar circumstances or conditions, or in failing to do something which a reasonably prudent person would have done under the same or similar circumstances. It likewise is never presumed, but must be established by proof by the party alleging it when, as in this case, it is denied by the other party.

Instruction No.

Section 33 of the Merchant Marine Act of June 5, 1920 commonly called the Jones Act, permits any seaman suffering personal injury in the course of his employment at his election, to maintain an action for damages at law against his employer with a right of trial by jury. In such action, all statutes of the United States modifying or extending the

common law right or remedy in cases of personal injury to railway employees are made applicable.

“Translated into marine language this makes recovery dependent on negligence either by the act of any of the officers, agents or employees of the shipowner or by reason of any defect or insufficiency of the vessel’s appliances, appurtenance and equipment. The practical effect of the incorporation of Section 1 of the Federal Employers’ Liability Act into the maritime law was to abolish the defense of the fellow servant rule and to give the seaman a cause of action based on negligence of a fellow servant resulting in injury, or for injury sustained by reason of any defect or insufficiency in the vessel and her appliances and equipment.

By Section 3 of the Act contributory negligence did not bar recovery as under the common law but the statute applied the admiralty rule of comparative damages and reduced the award in proportion to the degree of the employee’s negligence.

Section 4 of the Act abolished the defense of assumption of risk where the injury was due in whole or in part by the result of the negligence of a fellow-servant or the owner or by the violation of any statute enacted for the safety of the employee.

Instruction No.

Defendant was under a duty to properly superintend and supervise the work plaintiff was doing. If the defendants superior officers in the exercise of such supervision had opportunity to know that plaintiff was working in a dangerous position then

it was the duty of such superior officer or officers to restrain plaintiff from beginning or carrying on such work as long as the danger of this condition persisted, and the failure to do so constituted negligence.

Instruction No.

The obligation on the part of an employer of a seaman to use reasonable care to furnish such seaman with a reasonably safe place to work is not only a positive and continuing duty which exists during all the time of the seaman's service aboard the vessel, but it is also a non-delegable duty, that is, it is a duty which the law does not excuse the employer from fulfilling on the ground that he might have delegated this duty to the captain or the mate or some other employee or person, as it is a direct obligation on the ship-owner employer.

You are instructed that such an obligation to provide a safe place to work carries with it the duty of the defendant to maintain its equipment in a reasonably safe condition and to exercise reasonable care to see that the equipment is free from defects or hazards and properly cared for by the employees of the defendant and that every precaution is taken to safeguard plaintiff and other employees.

If you find that the plaintiff was injured as a direct and proximate result of the failure of the defendant to provide its employees with a safe place to work in a reasonably safe condition and to exercise reasonable care to see that such hold was free from hazards, so that in working in the hold

the plaintiff did not have a safe place to work at the time of the accident, you shall find for the plaintiff.

Instruction No.

You are instructed that the defendant, the Alaska Steamship Company, is a corporation, and that as a corporation it can only act through its officers, agents and employees. If you find that the plaintiff was injured as the proximate result of the negligence, if any, of any of the defendant's employees, or the neglect of duty, if any, of any of its employees, then you shall find for the plaintiff and against the defendant, the Alaska Steamship Co.

Instruction No.

I instruct you that the plaintiff has asked for damages for alleged permanent injuries arising out of the incident or occurrence of which he complains. In this connection, you are instructed that if the evidence merely shows a possibility of such a result from such incident or occurrence herein, then you cannot allow damages for any permanent injuries. Before you may allow damages for an alleged permanent injury, it must first appear by a preponderance of the evidence that such alleged permanent injury is reasonably certain to have resulted from the particular injuries of which the plaintiff complains herein.

Instruction No.

If you find a verdict for the plaintiff, you will assess his damages in such an amount as will fully and fairly compensate him for such personal in-

juries, if any, and for such loss of earnings as he has and will sustain, if any, as a direct and proximate result of defendant's negligence, if any. If you find that the plaintiff suffered plain and disability or physical impairment as a direct and proximate result of defendant's negligence, the damages assessed by you should include such an amount as will fully and fairly compensate him for such pain, suffering, physical disability or impairment, if any.

You are not permitted to indulge in speculation or conjecture, but may award damages only for such matters as are shown to have happened, or as are reasonably certain to happen. You will award no damages for injuries other than those alleged in the complaint and enumerated in these instructions. Such plaintiff, if you find that he is entitled to a verdict upon his first cause of action, can only recover for such injuries, if any, as were proximately caused by the negligence, if any, of the defendant.

The purpose of the law is not to punish the defendant, but to fairly and fully compensate the plaintiff. Under no circumstances shall your verdict as to such personal injuries exceed the sum demanded in the plaintiff's complaint therefor.

The law has not furnished us with any fixed standard by which to measure pain and suffering or the impairment of one's physical vitality, nor by which to measure the compensation to be paid for such things. With reference to these matters you

must be guided by your own experience and judgment based upon the evidence in the case.

Instruction No.

It is the duty of the court to instruct you as to the law governing the case, and you shall take such instructions to be the law. You shall consider the instructions as a whole, and not pick out any particular instruction and place undue emphasis on such instruction.

The court is not permitted to comment on the evidence, and it has not intentionally done so. If it has appeared to you that the court during the trial, or in the giving of these instructions, has commented on the evidence, you shall disregard such comment entirely.

You will also disregard any statement made by counsel on either side which is not sustained by the evidence, and any evidence which may have been offered on either side and not admitted by the court, and any evidence which after the admission was stricken by the court.

It is your duty to weigh the evidence calmly and dispassionately, to regard the interests of the parties to this action as the interests of strangers, to decide the issues upon the merits, and to arrive at your conclusion without any consideration of the financial ability of the one or the necessities of the other, and without regard to what effect, if any, your verdict may have upon the future welfare of the parties.

You shall not permit sympathy or prejudice to

have any place in your deliberations, for all persons are equal before the law and all are entitled to exact justice.

Instruction No.

The fact that the court has instructed you upon the rules governing the measure of damages is not to be taken by you as an indication on the part of the court that it believes or does not believe that the plaintiff is or is not entitled to recover damages. Such instructions are given to guide you in arriving at the amount of your verdict only in the event that you find from the evidence and from the instructions given you by the court that the plaintiff is entitled to recover damages. If from the evidence and the instructions given you by the court you find that the plaintiff is not entitled to recover, then you are to disregard entirely the instructions which have been given you concerning the measure of damages.

Acknowledgment of Service.

[Endorsed]: Filed January 7, 1955.

[Title of District Court and Cause.]

* * * * *

MARSHAL'S RETURN ON SERVICE

Received this subpoena at Seattle, Washington, on January 7, 1955, and on January 7, 1955, at Marine Hospital, Seattle, Wash., 10:45 a.m. I served it on the within named Jeanette Miller by delivering a copy to her and tendering to her the

fee for one day's attendance and the mileage allowed by law.

Dated: January 7, 1955.

Service Fees: Travel, \$0.40; Services, \$0.50; Total, \$0.90.

W. B. PARSONS,
U. S. Marshal
/s/ JOHN E. O'CONNOR,
Deputy U. S. Marshal

[Endorsed]: Filed January 13, 1955.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

The plaintiff, Richard T. Hawley, moves that the order and judgment of dismissal in the above-entitled cause be set aside and vacated and that a new trial be granted to the plaintiff for the following reasons:

1. There was not a complete absence of pleading or proof on issues material to the cause of action.
2. There are controverted issues of fact upon which reasonable men could differ.
3. There was sufficient evidence in the form of facts and inferences to be drawn therefrom so that reasonable men could come to a contrary conclusion.

4. The court failed to view the evidence in the light most favorable to the party against whom the motion was made and failed to give him the advantage of every fair and reasonable intendment that the evidence could justify.

/s/ JOSEPH S. KANE,
/s/ JOHN D. SPELLMAN,
Of Counsel,
Attorneys for Plaintiff.

AFFIDAVIT IN SUPPORT OF MOTION FOR NEW TRIAL

State of Washington,
County of King—ss.

Joseph S. Kane, being first duly sworn on oath deposes and says:

That the defendant's motion for dismissal at the end of plaintiff's case should not have been granted, for the following reasons:

1. That there was sufficient evidence as to negligence on the part of the defendant so that reasonable men could come to contrary conclusions as to liability.

2. That taken in the light most favorable to the plaintiff, as was required when the motion for dismissal was made by the defendant, the facts indicated:

(a) That defendant had created an unsafe condition in the hold where plaintiff was working when injured. The unsafe condition was the sheer drop

off which severely limited the working space in which the men were working and made it hazardous for them to swing the pallet board in the closely confined area. That plaintiff was injured as a direct and proximate result of the said unsafe condition, in that his injury was caused by the fact that the pallet board must necessarily have to be swung in a limited area and that this left no place of safety to which he could retreat and find protection as the board swung toward him.

(b) That defendant negligently failed to supply plaintiff with a sufficient number of competent co-employees to carry out the work going on at the time of his injury. That there was in fact only one member of the deck department present at the time of the injury and that the others present were cannery workers not skilled in cargo stowing and the plaintiff who was a member of the engineering department of the vessel and neither schooled nor having any specialized knowledge of cargo loading procedure. That members of the deck department of the vessel are licensed to handle and stow cargo and should carry out such work. That plaintiff's injury was directly and proximately caused by failure of defendant to supply competent and skilled members of the deck department to load the cargo and swing the cargo board in the manner necessitated by the confined area.

(c) That defendant negligently failed to properly supervise the work going on at the time plaintiff was injured. That no ship's officer or other member of the crew responsible for cargo stowage was

present in or near the said hold directing loading at the time plaintiff was injured. That had such supervision existed, proper safety precautions could have been taken to prevent injury to the plaintiff or others working in the hold; and that plaintiff was directly and proximately injured as a result of defendant's failure to properly supervise the work.

/s/ JOSEPH S. KANE,
Attorney for Plaintiff.

Subscribed and Sworn to before me this 19th day of January, 1955.

[Seal] /s/ JOHN D. SPELLMAN,
Notary Public, in and for the State of Washington,
residing at Bellevue.

Acknowledgment of Service attached.

[Endorsed]: Filed January 21, 1955.

[Title of District Court and Cause.]

NOTE FOR MOTION DOCKET

To: The Clerk of the Above Entitled Court:

Please note plaintiff's Motion for New Trial on the Motion Docket for Monday, January 31, 1955.

/s/ JOSEPH S. KANE,
Attorney for Plaintiff.

To: Bogle, Bogle & Gates, attorneys for defendant:

Please take Notice that the plaintiff's Motion for New Trial in the above-entitled cause will be

brought on for hearing on Monday, January 31, 1955.

/s/ JOSEPH S. KANE,
Attorney for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed January 26, 1955.

[Title of District Court and Cause.]

ORDER FOR REMOVAL OF EXHIBITS

Upon stipulation made and entered into by the parties hereto, through their respective and duly authorized attorneys,

It Is ordered that the United States Public Health Service Hospital Records relating to the plaintiff herein be temporarily released and returned when plaintiff has completed his present treatment at said institution.

Done in Open Court this 31st day of January, 1955.

/s/ WILLIAM J. LINDBERG,
United States District Judge.

Approved by:

/s/ BOGLE, BOGLE & GATES,
Attorneys for Defendant.

/s/ ROBERT V. HOLLAND

Approved and Presented by:

/s/ JOSEPH S. KANE

Acknowledgment of Service attached.

[Endorsed]: Filed January 31, 1955.

[Title of District Court and Cause.]

STIPULATION FOR ORDER OF REMOVAL

It Is Hereby Stipulated by and between the parties hereto, through their respective and duly authorized attorneys, that the United States Public Health Service Hospital records relating to the plaintiff herein be temporarily released so that they may be used by said hospital in further treatment of plaintiff which is necessary without further delay. Said records are Exhibits 6, 7-12, inclusive, in this cause.

Dated this 28th day of January, 1955.

/s/ JOSEPH S. KANE,
Attorney for Plaintiff.

/s/ BOGLE, BOGLE & GATES,
Attorneys for Defendant.

[Endorsed]: Filed January 31, 1955.

[Title of District Court and Cause.]

ORDER ON PLAINTIFF'S MOTION FOR NEW TRIAL

Plaintiff's Motion for New Trial having come on regularly for hearing on the 31st day of January, 1955, the plaintiff being represented by Mr. Joseph S. Kane and the defendant being represented by

Robert V. Holland and the court having heard argument of counsel and being fully advised in the premises; now, therefore

It Is Hereby Ordered, Adjudged and Decreed that the plaintiff's motion for new trial be and the same hereby is denied.

Done in Open Court this 9th day of February, 1955.

/s/ WILLIAM J. LINDBERG,
U. S. District Judge.

Presented and approved by:

/s/ ROBERT V. HOLLAND
of Bogle, Bogle & Gates,
Attorneys for Defendant.

Approved:

/s/ JOSEPH S. KANE,
Attorneys for Plaintiff.

[Endorsed]: Filed February 9, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Richard T. Hawley, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment of involuntary dismissal entered in this action on January 11, 1955; upon which an

order denying plaintiff's motion for new trial was entered on February 9, 1955.

/s/ KANE & SPELLMAN,
Attorneys for the Appellant,
Richard T. Hawley.

Acknowledgment of Service attached.

[Endorsed]: Filed March 4, 1955.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents:

That the undersigned, Richard T. Hawley in the above entitled action, as principal and National Surety Corporation, a corporation organized under the laws of the State of New York, and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto the Alaska Steamship Co., Corp. for the benefit of whomsoever it may concern in the penal sum of Two Hundred Fifty Dollars, lawful money of the United States for the payment of which well and truly to be made, the said principal and the said surety bind themselves, their heirs and personal representatives or successors jointly and severally, firmly by these presents.

Dated and sealed this 8th day of March, 1955.

Whereas, on the 9th day of February, 1955, the above entitled court rendered and entered a judg-

ment or decree in the above entitled cause in favor of the above named Alaska Steamship Co., Corp. and against the above named principal;

And Whereas, the said appellant feeling aggrieved by said judgment or decree and desiring to appeal from the same to the United States Circuit Court of Appeals, 9th Circuit; and perfect said appeal by this bond.

Now, Therefore, the Condition of the above obligation is such, that if the said appellant will pay all costs and damages that may be awarded against Him on said appeal or on the dismissal thereof, not exceeding Two Hundred Fifty (\$250.00) Dollars, then this obligation shall be void, otherwise to remain in full force and virtue.

[Seal] /s/ RICHARD T. HAWLEY,
NATIONAL SURETY
CORPORATION

/s/ By MILDRED PALITZKE,
Attorney-in-fact

[Endorsed]: Filed March 8, 1955.

[Title of District Court and Cause.]

STIPULATION TO EXTEND TIME TO FILE
RECORD ON APPEAL

It is hereby Stipulated and Agreed that the time of the appellant within which to print, serve and file the record on appeal herein, and to take all steps necessary to the prosecution of the appeal,

and to docket the same, be and the same is hereby extended to and including the 13th day of May, 1955 by reason of the extended length of the record herein and the inability of the court reporter to complete the said record prior to the date prayed because of the necessity for his daily appearance in court.

Dated this 18th day of March, 1955.

/s/ BOGLE, BOGLE & GATES,

Attorney for Appellee

/s/ KANE & SPELLMAN

/s/ JOSEPH S. KANE,

Attorney for Appellant

[Endorsed]: Filed April 4, 1955.

[Title of District Court and Cause.]

ORDER

Upon reading and filing the annexed stipulation dated the 18th day of March, 1955 it is

Ordered that the time of the appellant to file the record on appeal herein and to take all steps necessary to the prosecution of this appeal, and to docket the same, be and the same is hereby extended to and including the 13th day of May, 1955.

Done in open court this 4th day of April, 1955.

/s/ WILLIAM J. LINDBERG,

Judge.

Presented by:

/s/ JOSEPH S. KANE,
Attorneys for Appellant.

Approved:

/s/ BOGLE, BOGLE & GATES,
ROBERT V. HOLLAND
Attorneys for Appellee.

[Endorsed]: Filed April 4, 1955.

[Title of District Court and Cause.]

AFFIDAVIT

State of Washington,
County of King—ss.

Joseph S. Kane, being first duly sworn, on oath, deposes and says: That he is one of the attorneys for plaintiff; that on January 11, 1955 the Court orally granted defendant's motion for dismissal and an entry thereof was made in the docket by the Clerk of the Court; that subsequent thereto, on February 9, 1955, the Court denied plaintiff's motion for a new trial and plaintiff filed notice of appeal; that it now appears that no formal judgment has been entered and that the docket entry of the clerk may be inadequate as a final judgment from which to appeal; consequently, it is imperative that a judgment *nunc pro tunc* be rendered and entered to correct what might be a premature ap-

peal, through the mutual mistake and inadvertence of all parties.

/s/ JOSEPH S. KANE,

Subscribed and Sworn to before me this 11th day of May, 1955.

[Seal] /s/ JOHN D. SPELLMAN,

Notary Public, in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed May 11, 1955.

[Title of District Court and Cause.]

STIPULATION

Come now the parties, through their duly authorized attorneys, and stipulate that a judgment and order of dismissal with prejudice be rendered and entered in the above-entitled cause, nunc pro tunc as of the 9th day of February, 1955.

Dated This 11th day of May, 1955.

/s/ JOSEPH S. KANE,

Attorney for Plaintiff.

/s/ BOGLE, BOGLE & GATES,

Attorneys for Defendant.

[Endorsed]: Filed May 11, 1955.

In the United States District Court, Western District of Washington, Northern Division

No. 3621—In Law

RICHARD T. HAWLEY, Plaintiff,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, Defendant.

JUDGMENT AND ORDER OF DISMISSAL

This cause having come on for hearing on the 7th day of January, 1955, before the court and a jury; and at the end of plaintiff's case, defendant having moved for a judgment of involuntary dismissal for insufficiency of evidence to prove the cause of action, the court having heard the argument of counsel and being fully advised in the premises; now therefore

It Is Ordered, Adjudged and Decreed that defendant's motion for a judgment voluntary dismissal is granted and the cause of action be and hereby is dismissed with prejudice.

It Is Further Ordered that this order and judgment be entered nunc pro tunc to appear of record as of the 9th day of February, 1955.

Done in Open Court this 11th day of May, 1955.

/s/ WILLIAM J. LINDBERG,
U. S. District Judge.

Presented by:

/s/ JOSEPH S. KANE,

Approved by:

/s/ BOGLE, BOGLE & GATES

[Endorsed]: Judgment entered May 11, 1955;
nunc pro tunc February 9, 1955.

[Title of District Court and Cause.]

STIPULATION FOR RELEASE OF
EXHIBITS

Comes Now the parties above named through their attorneys and stipulate that the following numbered plaintiff's exhibits in this cause be sent up as part of the record in appeal herein:

Plaintiff's Exhibit No. 1. Drawing of the No. 1 hold on easel.

Plaintiff's Exhibit No. 2. Sketch of No. 1 hold made by plaintiff.

Plaintiff's Exhibit No. 5. Diagram of ship's hold.

Dated this 11th day of May, 1955.

/s/ JOSEPH S. KANE,

Attorneys for Plaintiff.

/s/ BOGLE, BOGLE & GATES,

Attorneys for Defendant.

[Endorsed]: Filed May 11, 1955.

[Title of District Court and Cause.]

ORDER AUTHORIZING RELEASE OF
EXHIBITS

Upon stipulation made and entered into by the parties hereto, through their respective and duly authorized attorneys,

It Is Ordered that the Clerk of this court transmit exhibits number one, two and five filed herein as part of the record on appeal in this case.

Done in Open Court this 11th day of May, 1955.

/s/ WILLIAM J. LINDBERG,
U. S. District Judge.

Presented by:

/s/ JOSEPH S. KANE,
Attorney for Plaintiff.

Approved by:

/s/ BOGLE, BOGLE & GATES
/s/ ROBERT V. HOLLAND
Attorneys for Defendant.

[Endorsed]: Filed May 11, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 as amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, I am transmitting herewith, as the record on appeal herein, all of the original documents in the file dealing with the action, which said appeal is being taken from the final judgment of involuntary dismissal entered January 11, 1955, upon which an order denying plaintiff's motion for new trial was filed February 9, 1955. The documents transmitted are identified as follows:

1. Complaint, filed January 4, 1954.
2. Subpoena with Marshal's Return thereon, filed 1-14-54.
3. Answer, filed January 22, 1954.
4. Deposition of Richard T. Hawley, filed 2-9-54.
5. Deposition of Clarence H. Meyers, filed 4-14-54.
6. Deposition of Raymond Joseph Perry, filed 1-5-55.
7. Pretrial Order, filed 1-6-55.
8. Request for Subpoena, Jeanette Miller, filed 1-7-55.

9. Plaintiff's Proposed Instructions to Jury, filed 1-7-55.

10. Marshal's Return on subpoena, Miller, filed 1-13-55.

11. Motion Plaintiff for New Trial, filed 1-21-55.

12. Note for Motion Docket, filed 1-26-55.

13. Order for Removal of Exhibits, filed 1-31-55.

14. Stipulation for Order removing exhibits, filed 1-31-55.

15. Order Denying Plaintiff's Motion for New Trial, filed 2-9-55.

16. Notice of Appeal, filed 3-4-55.

17. Cost bond on Appeal, filed 3-8-55.

18. Stipulation Extending Time to File Record on Appeal, filed April 4, 1955.

19. Order extending time to docket record on appeal to May 13, 1955, filed April 4, 1955.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparation of the record on appeal in this cause, to-wit: Filing fee, Notice of Appeal, \$5.00; and that said amount has been paid to me on behalf of the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 7th day of May, 1955.

[Seal]

MILLARD P. THOMAS,

Clerk,

/s/ By TRUMAN EGGER,

Chief Deputy.

[Title of District Court and Cause.]

SECOND SUPPLEMENTAL CERTIFICATE
OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that I am transmitting herewith, supplemental to the record on appeal herein, the following original documents, to wit:

20. Court Reporter's Transcript of Portion of Proceedings of January 7, 1955, filed May 10, 1955.

21. Court Reporter's Transcript of Portion of Proceedings of January 11, 1955, filed May 10, 1955.

22. Affidavit of Joseph S. Kane, filed May 11, 1955.

23. Stipulation for entry of judgment nunc pro tunc February 9, 1955, filed May 11, 1955.

24. Judgment and Order of Dismissal filed May 11, 1955 nunc pro tunc February 9, 1955.

25. Stipulation transmitting exhibits of plaintiff, numbered 1, 2 and 5, filed May 11, 1955.

26. Order Authorizing Transmittal of Plaintiff's exhibits numbered 1, 2 and 5, filed May 11, 1955.

Plaintiff's Exhibits numbered 1, 2, and 5.

In Witness Whereof I have hereunto set my hand

and affixed the official seal of said District Court at Seattle this 11th day of May, 1955.

[Seal] MILLARD P. THOMAS,
 Clerk,

/s/ By TRUMAN EGGER,
 Chief Deputy.

[Title of District Court and Cause.]

DEPOSITION OF RICHARD T. HAWLEY

1001 Smith Tower, Seattle, Washington, January 27th, 1954.

Appearances: Howard P. Staley, 1001 Smith Tower, Seattle, Washington, for the Plaintiff. Edward S. Franklin, of Messrs. Bogle, Bogle & Gates, 603 Central Building, Seattle, Washington, for the defendant.

Deposition upon oral examination before trial of Richard T. Hawley, taken at the instance of the defendant in the above entitled cause, pending in the District Court of the United States for the Western District of Washington, Northern Division, pursuant to oral agreement of counsel for the respective parties, before H. W. Boylan, a notary public in and for the State of Washington, at 1001 Smith Tower, Seattle, Washington, on the 27th day of January, 1954.

It was stipulated by and between counsel for the respective parties that the deposition is being taken at the instance of the defendant for the pur-

pose of discovery in accordance with the rules of the above entitled court.

It was further stipulated by and between counsel for the respective parties that all objections except as to the form of questions or the responsiveness of the answers thereto are reserved until the time of trial.

RICHARD T. HAWLEY

being first duly sworn in the above cause, testified on his oath as follows:

Q. (By Mr. Franklin): What is your name, please? A. Richard T. Hawley.

Q. How old are you, Mr. Hawley?

A. 49.

Q. Are you single or married?

A. Single.

Q. Where do you live, sir?

A. 912 First Avenue.

Q. How long have you been going to sea?

A. 30 years.

Q. How long have you been sailing out of Seattle?

A. Oh, about 13 months now, this last time.

Q. In the Alaska service? A. Yes, sir.

Q. Did you ever have any injuries before the one you claim occurred on the Square Knot?

A. Previous injuries, you mean?

Q. Yes.

A. I was injured on one of the American Mail ships in 1946 and in 1937 I had my leg injured in an American-Hawaiian ship.

(Deposition of Richard T. Hawley.)

Q. Those are the only two injuries you recall of any consequence? A. Yes, sir.

Q. Was it a double hernia on the American Mail? A. No, single hernia.

Q. Right or left side?

A. On the left side.

Q. You recovered from that entirely, did you, Mr. Hawley? A. Yes, sir.

Q. Did you have any post-operative infections or trouble with it? A. No, none at all.

Q. Where were you operated for that?

A. In the Marine Hospital here in Seattle.

Q. Then with reference to your injury on the American-Hawaiian steamship, which leg was that?

A. That was the left leg.

Q. Above or below the knee?

A. Below the knee.

Q. Above the ankle? A. Yes, sir.

Q. About the middle of the leg?

A. Yes, sir.

Q. Were both bones broken or just one?

A. No, no bones were broken at all. I skinned my leg and later it got infected and I had to go to the hospital and they put hot packs on it and I was in there a little over a month and they drained it out.

Q. Just a skin infection? A. Yes, sir.

Q. Mr. Hawley, I notice you had some injury to your left index finger?

A. Yes, that happened years ago when I was a young fellow. I worked in a machine shop.

(Deposition of Richard T. Hawley.)

Q. The end joint was removed?

A. Yes, removed.

Q. Mr. Hawley, what were your earnings, what earnings did you report to the Federal Government for the year 1952? A. For 1952?

Q. Yes. A. 4,000—close to \$5,000.

Q. \$5,000, and then what did you earn for 1953 up to the time of your injury?

A. I haven't earned anything—for 1952?

Q. No, for 1953—that is the year we are just through. A. Around \$4,000.

Q. \$4,000 up to the time of your injury?

A. Yes.

Q. When did you join the Square Knot, roughly?

A. I have it right here——

Q. About July 30th, was it?

A. July 30th.

Q. What did you join her as?

A. Wiper.

Q. And you claim you were injured on August 21, 1953, Mr. Hawley? A. Yes, sir.

Q. Where was the ship?

A. It was in——

Q. Uganik?

A. Some port there at Kodiak Island, I forget—it is a funny name.

Q. Uganik, wasn't it?

A. I guess it was.

Q. What time did your accident happen?

A. 8:30 in the morning.

Q. In what part of the vessel?

(Deposition of Richard T. Hawley.)

A. In No. 1 hold on the forward end.

Q. What were you doing at the time of your accident?

A. Stowing cargo.

Q. Loading salmon?

A. Yes.

Q. How many men were in No. 1 hatch at the time of your accident?

A. There was ten men below.

Q. Who were they?

A. There was one, the Sailors' delegate, and myself, and three cannery workers on the port side.

Q. Just a moment, what is the name of the Sailors' delegate?

A. Perry.

Q. The Sailors' delegate—

A. And myself and three cannery workers on the port side, and on the starboard side there was two sailors and three engine room men—one wiper and two oilers.

Q. On the starboard side there were—

A. Two sailors, two oilers, and one wiper.

Q. Two sailors, two oilers and one wiper?

A. Yes, sir.

Q. Do you know the names of the sailors?

A. There was only one sailor, I know.

Q. What is his name?

A. Meyers. The other fellow I didn't know his name.

Q. Who were the two oilers?

A. Sousa, and the other fellow I can't remember his name—it was a Polish name—and the wiper's name was Olsen.

Q. And you were working on the port side?

(Deposition of Richard T. Hawley.)

A. Yes, sir.

Q. How long had you been working on the port side before your accident?

A. We started at 7:00 o'clock.

Q. Where did your accident occur with reference to No. 1 hatch?

A. I was in the center of the hold right next to the ladder.

Q. Now, the center of the hold next to the ladder on what side?

A. On the port side. We were working port side.

Q. How far forward had cargo been stowed in front of you—right up to the forward bulkhead?

A. No, there was cargo stowed from the ladder to the bulkhead.

Mr. Franklin: Let's mark this sketch Defendant's Exhibit 1, and the other side Defendant's Exhibit B for identification.

Q. Mr. Hawley, would you put a letter "X" where you were standing?

Q. And would you put a circle around it, please? In other words, you were standing—

A. Underneath the hatch coaming.

Q. Underneath the hatch coaming and right near a manhole or a ladder running up?

A. This side of the ladder—we already filled in behind the ladder as on the other sketch there you can see where we filled it.

Q. This Defendant's Exhibit B shows how far you had filled it, doesn't it?

A. Yes, we filled it from here, back here from

(Deposition of Richard T. Hawley.)

the ladder, and we were working out towards the corner of the ship.

Q. Now, would you indicate on Defendant's Exhibit B just where you were standing at the time of your accident? A. Yes.

Q. Well, this area then had not been filled in with cases of salmon where you were standing at the time of your injury?

A. No, it hadn't. We had only filled up to the ladder, then we worked to the side of the ship and brought it back, then after we got the sides filled up then we would fill in the square of the hatch.

Q. Now, how far forward did the tier of salmon run from where you were standing?

A. How far forward?

Q. Yes.

A. There was only three cases between where I was standing and the deep tank.

Q. Three tiers?

A. There was three tiers, yes.

Q. All right, what was the space between the end of the tier and where you were standing?

A. Well, about two cases of salmon.

Q. How wide would that be?

A. Oh, it would be about around close to three feet—under the protection of the hatch coaming.

Q. How far away from the ladder were you?

A. About three feet.

Q. Three feet outboard? A. Yes, sir.

Q. And the area that you were standing in,

(Deposition of Richard T. Hawley.)

there was nothing piled right out to the skin of the ship, was there?

A. No, there wasn't nothing out to the skin of the ship.

Q. Was anybody standing near you at the time of the accident?

A. There was supposed to be another man on the other corner of the board on my side and two men on the outside, and one fellow always watched to see the load was swung in far enough before we gave the winch driver the signal to lower. At the time these three fellows grabbed ahold of the board and swung it the opposite way.

Q. Yes, we will come to that. What kind of winches do they have on the Square Knot?

A. Electric winches.

Q. And you had a hatch tender down below giving signals?

A. No, one man signaled the winch driver after the load was in. There was a hatch tender on the deck.

Q. Well, there was somebody down below in the hold from the port side giving signals?

A. No, nobody giving signals because the man on the deck signaled the load down in the hold, but one of us would stand to signal to drop the load after we swung it under the hatch coaming.

Q. These cases of salmon were on pallet boards?

A. Yes, sir.

Q. And how many tiers would they be on?

A. There was three tiers on them.

(Deposition of Richard T. Hawley.)

Q. About how high?

A. Oh, I would say close to around $3\frac{1}{2}$ or 4 feet.

Q. And the first thing then the winch driver would do, he would lower this pallet board down to the lower hold and stop it, wouldn't he?

A. He would stop it about three feet off the floor.

Q. All right. What was the next procedure?

A. Was to swing the load so that the pallet board would come down forward and aft and we would swing the board athwartships in order to swing it underneath so we could work off of both sides, the forward end and after end, because they were only using half of the hold for salmon because they had fish meal in the after part of the hold.

Q. So that after the winch driver brings the pallet board to a stop about three feet above the deck, what do you and the rest of the men do?

A. There was four men supposed to be one on each corner and we would swing the board around so we could go to work and swing the long side thwartships so we could unload from each one and we would each unhook our corner.

Q. Then after you moved in the pallet board to the location you wanted it set down, then you would give a signal?

A. The other odd man would give the signal for the winch driver to drop it.

(Deposition of Richard T. Hawley.)

Q. Then you would each take the cases and pile them in?

A. Yes, one man working off of each corner.

Q. And that was the procedure you had followed all morning? A. Yes, sir.

Q. At the time of your accident where were you going to stow this salmon?

A. On the port side in the forward end.

Q. And referring to the load that you claim you were injured on, the first thing the winch driver did was to lower it down, was it?

A. Yes, sir.

Q. And where was it when he lowered it down, was it in the center of the square or forward or where? A. About one-third of the way.

Q. Forward?

A. No, it was on the forward end. They had the booms out so they could get in the forward end.

Q. The booms were trimmed so it would be in the forward end? A. Yes.

Q. All right, how far down did the winch driver drop this load before you swung it?

A. Within three to four feet of the deck.

Q. Now, at that time how far away were you from the load?

A. Oh, I would say about around four to five feet.

Q. Which way was the pallet board facing, fore and aft? A. Fore and aft.

Q. And you wanted to turn it thwartships?

A. Yes, sir.

(Deposition of Richard T. Hawley.)

Q. All right, then did each of the four members of the gang grab an end of the pallet board?

A. Each corner, yes, sir.

Q. And which way were they to turn it?

A. We were turning it crosswise then swinging them in under the hatch coaming.

Q. How far under the hatch coaming were you going to drop this load?

A. Oh, about a foot or two underneath the hatch coaming, as far as the cable would allow it to swing in.

Q. And at that time when each man was on the load were you pushing it forward?

A. We were pushing it thwartships—over towards the ship.

Q. Sort of counter-clockwise?

A. Well, they pushed it counter-clockwise the time I got hit, but we had been pushing it clockwise before. That is the way we had done it.

Q. So we are down to the point where each man is on one of the corners. Then who determined which way it should be pushed?

A. Well, we already had been agreed on the pushing them crosswise on account of the opening in the back of the hold.

Q. Who made that agreement?

A. Well, that is the Sailors' delegate was in charge of that side of the ship where we were unloading.

Q. And he had previously specified how they were to be turned?

A. Yes, sir.

(Deposition of Richard T. Hawley.)

Q. Then on this particular occasion——

A. On account of these three cannery workers were green and had never worked before on a ship and he told them how to load.

Q. Who were on this pallet board at the time that you were hurt, besides yourself?

A. There was Perry, the delegate, and these three cannery workers. I don't know their names.

Q. That would be five people on the load?

A. Well, there were four men—there was five men working on each side.

Q. Well, how many men had ahoid of the pallet board at the time it swung and hit you?

A. Well, they were on the other side of the board. I didn't see how many had ahoid. One fellow was supposed to be on the same side as me but he didn't come over to that side.

Q. If you had done the normal operation you would have——

A. Had two men on each side.

Q. You would have had two men on each side?

A. Yes, sir.

Q. Why didn't you have two men on each side at this time?

A. They were on the after end of the hold and I thought they were going to swing it clockwise like they always did but they swung it counter-clockwise and that is when it caught me.

Q. If this file here is the pallet board and that wall there is the forward bulkhead, did they swing it so that it turned to the left or to the right?

(Deposition of Richard T. Hawley.)

A. We were swinging it to the right to start with and at the time I got hit they swung it to the left and that is where they pinned me in between the salmon and the pallet board.

Q. Now, at the time you first started to move this, were there four men—were they all on one side except yourself?

A. They were all on one side except myself.

Q. And you were on what corner when you first grabbed ahold of the board?

A. On the inboard corner.

Q. And the three other men, where were they?

A. They were on the after side of the board.

Q. They would be here (Indicating)?

A. The after side—

Q. Well, fore, aft, inboard, outboard—they would be on the back of it, wouldn't they?

A. Yes, they were on the back.

Q. All right, so that is the way you started off, was it, with you on the inboard corner and the three men on the back of the board?

A. No, it didn't start out that way. We started out, there was two men working on each side of the board.

Q. All right, two men working on each side of the board when you started out, is that right?

A. That is right.

Q. Then which way did the men push the pallet board?

A. We always pushed it clockwise.

Q. Clockwise—that would be then to the right,

(Deposition of Richard T. Hawley.)

wouldn't it, as you faced forward—is that right?

A. Facing aft.

Q. Well, you say, in other words, as you faced aft—

A. We would swing it to the right.

Q. You would swing it to your right and that would swing it outboard then, wouldn't it?

A. No, swing it inboard.

Q. No, if you are forward facing aft your right is out on the skin of the ship and your left is inboard, isn't it? A. Yes.

Q. All right. Now, let's get back to where you started. You say that there were two men on each end of the board and the first thing that you planned to do was to push it, you say now—

A. Clockwise.

Q. Clockwise? A. That is right.

Q. To the right as you face forward?

A. Yes, that is the way the board was facing.

Q. Well, first it was facing fore and aft?

A. Yes.

Q. Then you say you and the two men pushed it clockwise, which would be to your right as you face forward, is that right? A. Yes.

Q. All right, then it was still three feet above the deck?

A. Above the floor where we were working.

Q. Then what happened next? Was there any change in the position of these men?

A. In what way do you mean?

(Deposition of Richard T. Hawley.)

Q. Well, you say when you first started in there were two men on each side of the board.

A. You see, when we started in we brought up two tiers, what they call two tiers. One tier is four cases of salmon, and the second tier, then we fill in the center, then we make a flooring for the next tier and going up on this next tier there wasn't room enough. In order to land the pallet board to work off of, we had to pack the cases and stack them seven high and we filled in on the forward end of the hold and started across to the side of the ship—start in the center and work out.

Q. Would you put the letter "P" where you had planned to put this pallet board down?

A. Yes.

Mr. Franklin: I see. Off the record.

(Discussion off the record.)

Q. Mr. Hawley, now you have illustrated that what you had planned to do was when this pallet board was landed in a fore and aft direction in the square, you would then give it a quarter-turn—

A. And then swing it in.

Q. And then swing it outboard in the direction of the skin of the ship and then have the winch driver drop it there? A. Yes, sir.

Q. All right. When you started in to make this movement there were two men on each end, were there?

A. There had been two men working on each end.

(Deposition of Richard T. Hawley.)

Q. Yes, then you started to make this quarter-turn? A. Yes.

Q. And what happened after you made the quarter-turn?

A. Then we would swing the board underneath the end of the side of the ship.

Q. And how did you get hurt?

A. When the board came down the three men were on the after side of the board.

Q. When the board came down—you mean when it was first landed?

A. When they brought it down into the hold.

Q. Yes.

A. And I was on the forward end and the fellow that was supposed to be on the corner with me, on account of filling in back of the ladder we were starting out to the side, he moved back underneath and when he came out he got hold of the same side of the board as the others and they swung it counter-clockwise then.

Q. Well, then what happened to you?

A. I was standing back in here and the corner of the board caught me below the belt.

Q. Well, if they were swinging the board out here as you have indicated to land it in "P" how would you be away up there near the manhole?

A. This is the square of the hatch.

Q. Yes.

A. They had the gear trimmed on account of we were only using half of the forward side of the hold, and the gear was trimmed so when they

(Deposition of Richard T. Hawley.)

brought the loads down in they would land right close to the center, and we were turning the board then swinging our loads on our side and the other fellows when they would land would swing them to the starboard side, and when the load came down it just came down on an angle right here and I was standing back in underneath the hatch coaming and when the board came down, they turned the board, the corner hit me in the stomach.

Q. Well, in other words, you had just begun to turn the board around, had you, at the time you were struck? A. Yes, sir.

Q. And you were on the forward end?

A. Forward end.

Q. Forward inboard end of this pallet, were you? A. Yes, sir.

Q. And did you know what the men were going to do, that they were going to swing it or turn it to the outboard side? A. Yes, sir.

Q. And did the board swing or jump in any way? A. No, the board was pushed.

Q. And could the men see you where you were standing?

A. No, the load was high, too high for them to see over.

Q. They couldn't see where you were?

A. No, sir.

Q. Was that the position that they expected you to assume? A. Yes, sir.

Q. And you say that you were pressed—or what part of the pallet board struck you?

(Deposition of Richard T. Hawley.)

A. The forward inboard corner.

Q. That was the corner that you were to grab hold of? A. Yes, sir.

Q. Did it strike you before you grabbed hold of it?

A. No, sir, I had my hand on the line.

Q. What line?

A. From the pallet board to the hook.

Q. What were you doing, were you swinging it over with the line?

A. Each one grabbed a corner. There is four lines there. They use a bridle.

Q. Yes, you grabbed a leg of the bridle?

A. Each one was grabbing a corner of the bridle.

Q. So you grabbed the leg of the bridle and as you were facing aft you were going to swing it out to the port side?

A. No, I was going to swing it in to inboard, to swing it clockwise.

Q. And you claim that these men didn't follow the procedure and swung it counter-clockwise?

A. Counter-clockwise.

Q. And what were you pinned between?

A. I was pinned between the pallet board and the cases of salmon we loaded on the forward end of the hold.

Q. What part of your body was pinned?

A. It didn't pin me in—it just hit me below the belt.

Q. Sort of a glancing blow?

(Deposition of Richard T. Hawley.)

A. A pushing blow. It knocked me back against the cases of salmon.

Q. How far back did it knock you?

A. About two feet.

Q. And where were you struck with reference to your belly button?

A. Below the belly button.

Q. How far below?

A. Oh, I would say about three or four inches below.

Q. Was the board being moved rapidly or slowly at the time it struck you, was it being turned slowly or quickly?

A. Well, it was just a sharp turn, is all.

Q. What would you estimate the weight of that pallet board to be? A. About a ton.

Q. That is with the loads on it?

A. Yes, sir.

Q. Then did it cause you to release your grip on the bridle?

A. It made me release my grip on the bridle and when I fell back against the cases of salmon I grabbed for the ladder and got as close to the ladder as I could. I almost went down but caught myself on the edge of the ladder and held on.

Q. How big an area was it that struck you—just the wooden edge of the pallet board?

A. Steel corner with a round eye in it that the hooks fit into.

Q. What happened after you were knocked back against the ladder?

(Deposition of Richard T. Hawley.)

A. I went to work and told the other fellows to hold it a minute and they held onto the board.

Q. Had any of them seen your accident?

A. Not on their side of the hold.

Q. Do you know if anybody saw you get hit?

A. Yes, the next morning after the day I got hurt I didn't know anybody seen it at the time, but the next morning I was sitting in the mess room and one of the sailors on the other side of the hold come in the mess room at coffee time and asked how I felt and said, "It is a wonder that board didn't knock you cold."

Q. Who was he?

A. Meyers. He asked me how I felt at that time. I was waiting for the third mate to get medical treatment at the time.

Q. After this happened and you called for them to stop, how long did they stop?

A. They just waited until I got out from behind the board, then we swung it in towards the side of the ship.

Q. And continued with your work?

A. Yes, sir.

Q. Did you report the injury to any of the men——

A. At the time——

Q. Excuse me—did you report your injury to any of the men who were working with you at the time it occurred?

A. I reported it to the delegate. I told him at the time when I got hit.

Q. You told Sousa?

(Deposition of Richard T. Hawley.)

A. No, not Sousa—Perry.

Q. You told Perry? A. Yes.

Q. When did you tell him?

A. Right after we landed the load.

Q. He was over on the other side, wasn't he?

A. Yes, he was one of the men working on the board with me.

Q. What did you tell him?

A. I told him from now on to watch it—"I got hit in the stomach that time with the load," and then I said, "It kind of knocked the wind out of me," and that is all it did at the time.

Q. Then how much longer did you work that morning?

A. We worked until 9:00 o'clock and knocked off for coffee and came back after coffee time and about a quarter to 12:00 my stomach started to pain and I couldn't lift one of the cases of salmon up. It was like a strain there.

Q. Now, this was overtime work you were doing, wasn't it? A. Yes, sir.

Q. I mean this work isn't required of a black gang man?

A. It is in the way—it is a company ruling that any of the wipers or day men instead of working down in the engine room that they go to work in the hold during the daytime, during the cargo work, and they will be released from the engine room in order to work cargo to give the sailors a hand as per agreement of the Firemen's union.

(Deposition of Richard T. Hawley.)

Q. But if you don't want to do stevedoring you don't have to?

A. You don't have to, but they expect you to according to the agreement.

Q. Well, then you felt all right, did you, until about a quarter to 12:00 that morning when your stomach started to pain?

A. It started to pain then and I told the Sailors' delegate I couldn't take it any longer, that I was going to knock off.

Q. You told Perry you were going to knock off?

A. Yes, sir.

Q. Did you report your accident immediately to the ship's officers?

A. The third mate at the time was sleeping.

Q. I say did you report your accident immediately to any of the ship's officers, the master or mates or the chief engineer?

A. No, not at the time.

Q. When was it you first made any report of your injury to any officer of the Alaska Steamship Company?

A. Around 6:00 o'clock I went up and seen the chief mate.

Q. And what did you tell him?

A. I asked him if the third mate was up and he said no, and he told me to knock on his door. I knocked on the third mate's door and he didn't answer so I went back to the chief mate's room, which was right next door, and told the chief mate I would like to get some liniment or something, I

(Deposition of Richard T. Hawley.)

thought I got a bruise on my stomach, and he said for me to wait until 12:00 o'clock that night until the third mate got up, that the third mate had been working all night.

Q. And this was about——

A. 6:00 o'clock—6:00 p.m.

Q. And did you see the third mate then at midnight?

A. At around 8:30 my stomach started to hurt me and I couldn't lie down on my stomach at the time.

Q. This is in the evening?

A. Yes, so at 9:00 o'clock when the sailors and the engine room gang knocked off for coffee I called our delegate Sousa and had him go and see the captain to see about getting medical treatment then or otherwise I would want to go see a doctor at 8:00 o'clock in the morning.

Q. Had you had your lunch?

A. No, I didn't eat no supper or dinner.

Q. I beg your pardon?

A. I didn't eat no supper or dinner.

Q. You had your lunch at noon?

A. No, I didn't. I went right to bed and slept until 6:00 o'clock.

Q. All right, then what happened?

A. Then Sousa went up to the captain and the chief engineer and the captain and chief engineer came down to the room at 10:00 o'clock.

Q. And what was done for you then?

(Deposition of Richard T. Hawley.)

A. The chief engineer went up to the third mate and got some liniment.

Q. And was there any evidence of injury at this time? A. No, there was no——

Q. No bruise or swelling?

A. No bruise. There was swelling—just a little bit.

Q. How big was the swelling?

A. Oh, it wasn't very much, it just barely showed.

Q. Well, I mean did you call any swelling to the attention of the captain or the chief engineer?

A. I showed it to them at the time.

Q. Was there any comment made by them about swelling?

A. The chief engineer said he would go up and see the third mate and get some liniment.

Q. But I say was any comment made about any swelling? A. No, no comment made at all.

Q. Then when you got this liniment what happened after that?

A. The captain sent for the purser and had the purser come down and take a statement.

Q. Then did you go to bed that night?

A. I went to bed that night. I was in bed at the time.

Q. You were in bed at the time? A. Yes.

Q. Then what happened on the following day or the next day?

A. Well, I got this liniment that I used but it didn't seem to do any good so in the morning about

(Deposition of Richard T. Hawley.)

9:00 o'clock when they were knocked off for coffee I went up and got the third mate and he gave me some camphor liniment to try that on it—he didn't have anything else that he knew of, and he looked in the medical book and couldn't find anything where he could treat it at that time.

Q. What was the appearance of your stomach the next morning?

A. Well, there was a little—there was pus running out of the navel.

Q. Did you ever have any infection down in your navel before? A. No, sir.

Q. What was done then the next day?

A. Well, I used this camphor liniment for a couple of days but it didn't seem to help.

Q. Did the ship leave Uganik?

A. Yes, sir.

Q. And where did it head for?

A. It was heading for Seattle.

Q. Then how many days from the time of your accident until the ship got into Seattle or Bellingham, wherever it went?

A. It came into Seattle, let's see, we arrived in on Saturday night.

Q. About how many days would it be?

A. Oh, six days from the time I got hurt.

Q. In other words, Uganik was your last port?

A. Last port.

Q. And you headed right for Seattle?

A. Yes, sir.

Q. And did you go to work on the way back?

(Deposition of Richard T. Hawley.)

A. On Wednesday I went down in the engine room. I felt a little better so I went down in the engine room and seen the first assistant and told him I would turn to but I wouldn't do no lifting or anything at the time but I would turn to on light work if he wanted. We were doing a lot of repairing of the engine room pumps and I told him I could do that if he wanted me to, but the chief had left orders for me not to turn to until I seen a doctor.

Q. What was the condition of this pus running out of your navel on the trip down?

A. Well, there was just a slow drainage there, just once in a while, and I went in and took a shower about two or three times a day and washed it off and it seemed to clear up for a little while and then started running again.

Q. Did you have any pain?

A. Yes, it was like there was a pressure there.

Q. Was there any swelling?

A. A little bit.

Q. How big—the size of a pea or the size of the head of a pencil or how big was the swelling?

A. Well, it was in an area all around my stomach at the time—like over-eating.

Q. Did you eat all your meals on the way back?

A. No, not all of them. I didn't eat only breakfast, then at nighttime I would have a little lunch.

Q. And when you got down to Seattle you paid off, did you?

A. No, we got in on a Saturday and I reported

(Deposition of Richard T. Hawley.)

in to the Marine Hospital on Monday and the doctor told me to come back and I figured the ship was paying off on Tuesday and I asked him if I could come back a day or so later and he says okay, and he entered me on the 2nd of September to come back, but when I went down to the ship to get my clothes they didn't pay off. The day I entered the hospital was the day the ship paid off.

Q. Do you remember when you entered the hospital? A. September 2.

Q. How many days was that from the time you had arrived in Seattle?

A. That was four days.

Q. And how long were you in the hospital?

A. I was in the hospital a month.

Q. October 20th, it says here.

A. Until October 20th.

Q. And what did they do for you in the hospital?

A. On September 8th they operated on me and cleaned my stomach out. There was some kind of infection in there. They cleaned my stomach out and sewed it up.

Q. Well, did they enter your stomach?

A. Yes, sir.

Q. Cut open your stomach or above on the flesh over your stomach?

A. No, they cut through my navel and on through my stomach. I can show you here.

Q. No, don't bother.

(Deposition of **Richard T. Hawley.**)

A. It was cut from here down to the bottom there (Indicating).

Q. I see. Did they tell you what they did?

A. Well, at the time the doctor said there was some kind of—well, they call them kind of like stones they had to take out. It was filled in around my intestines and it was building up in there.

Q. Well, they took some stones out of your intestines?

A. Well, it was what they call stones. It is like pus sacs, is what it is, their medical terms. They claim that it was all around in my intestines and everything else when they cut it out.

Q. Then you left the hospital on October 20th?

A. At that time the incision was open about three-quarters of an inch and about three inches long and they treated it twice daily to build the scar tissue up around, so on October 7th or 8th they had to undermine the skin and resew it again.

Q. And did you have infection in that wound?

A. Well, they left a hole about around two inches deep for a drainage to come out and the doctor wanted it to heal from the inside out.

Q. Who was the doctor operated you?

A. Dr. Wise and Dr. Inis Ice.

Q. That is a lady?

A. Yes, that is a lady doctor. She only had about eight initials in her whole name—Inis Ice. Her and her husband are in charge of the Public Health in Tacoma now. They have been transferred to Tacoma.

(Deposition of Richard T. Hawley.)

Q. Dr. Wise is still in the hospital, is he?

A. Yes, sir, he has been transferred down to cutting up bones and stuff like that.

Q. Then they discharged you from the hospital—

A. As an out-patient.

Q. On October 20? A. Yes.

Q. And what has been your condition since that time?

A. At that time I went back for daily treatments up until September the 2nd.

Q. Not September—you mean December?

A. I mean December.

Q. And what happened December 2?

A. I was discharged for three to six months to make a trip and then come back. They left a hernia there at the time. They took a piece out of the lining of my stomach and there was kind of a hernia left there from the operation but they wanted to build up that and Dr. Wise advised me if I could go to work and take a trip and come back within three months it would be better to come back then and they would have more scar tissue to work on at the time, but on September 20th I noticed that there was a swelling in the center and it had started to turn red so I went back to the hospital.

Q. September 20th?

A. I mean December 20th.

Q. And what did they do then?

A. Dr. Walker advised me to have it repaired.

Q. Dr. who? A. Dr. Walker.

Q. He advised you to have the hernia repaired?

(Deposition of Richard T. Hawley.)

A. Yes.

Q. Did you have it repaired?

A. He told me to come back the day after Christmas and enter the hospital because there was no operations between then—they were filled up until after Christmas. I got operated on December 29th.

Q. And when did they discharge you?

A. January 8th.

Q. And then you were still an out-patient?

A. I was on out-patient until last Friday and I noticed that there was kind of a pus bag in the same area as before so I reported back in last Friday. I went down to see the doctor that operated on me but he was in surgery so another doctor that took Wise's place on the 7th floor, he looked me over and he lanced it.

Q. When was that?

A. He lanced it last Friday.

Q. January—

A. 22nd, he lanced it, so he advised me to go up in the hospital right away and put hot packs on. It isn't an infection—they got some big word for it—it is a light watery drainage, and yesterday morning, I was released yesterday morning, and Dr. Walker lanced it again and told me to come back in a week or so. He said he didn't think the operation for the hernia had come loose below but he wanted to get that drainage out before they would go to work and make sure, so I have to report back

(Deposition of Richard T. Hawley.)

on February 2 to see this Dr. Marks who is in charge.

Q. At the time just before you claim you were struck, Mr. Hawley, you had both hands on the bridle? A. Yes, sir.

Q. And were you pulling it?

A. I was swinging—going to swing it.

Q. You were going to swing it to your left?

A. Yes, as I was facing aft to my left.

Mr. Franklin: Will you read the last question and answer?

(Last question and answer read by reporter.)

Q. And what did the men do now, so I get it straight?

A. They pushed the board to the right from the other side. I couldn't see them on account of the load was so high.

Q. And as I understand you, at this particular time that your accident happened how were the men distributed?

A. They were back under the hatch coaming towards the skin of the ship. There is a coaming there and it is a custom to stand back under the hatch coaming while a load is coming down in the hold in case anything should come off.

Q. How far had this load been moved forward at the time you were struck?

A. In which way do you mean?

Q. Forward when it first came down and landed it was lying——

(Deposition of Richard T. Hawley.)

A. It was laying within two feet of the hatch coaming at the time.

Q. And at the time the board was landed it was facing in a fore and aft direction about two feet from the forward hatch coaming?

A. Yes, about even with the ladder but about two feet out from the hatch coaming in the square of the hatch.

Q. All right, now, at that time the load was at rest? A. It was just come to a stop.

Q. Come to a stop, and at that time then it was facing fore and aft? A. Yes, sir.

Q. And you grabbed the inboard forward bridle— A. Yes, sir.

Q. —and as you were standing there and you figured they were going—

A. To go to the left.

Q. Lower it to your left? A. Yes.

Q. But instead of that—

A. They swung it to the right and caught me.

Q. They swung it to the right?

A. Yes, sir.

Q. Where were these men standing by the pallet board at the time they swung it?

A. On the after side of the pallet board.

Q. On the after side? A. Yes.

Q. So they had just begun to swing it, they hadn't completed the swing?

A. No, it hit me before they could complete the swing.

Q. What is the length of the pallet board?

(Deposition of Richard T. Hawley.)

A. Oh, I would say between five and six feet.

Q. And there were tow tiers of salmon piled on top of it? A. There was three tiers.

Q. About four feet?

A. Oh, it would be around five feet.

Q. How many cases in a tier, do you think—about five?

A. There is three cases on a tier. It was three high on the pallet board and a case is about 14 to 16 inches.

Q. And the pallet board was about six feet fore and aft, would you say, and about how many feet wide?

A. Oh, around four feet wide, 3½ or four feet.

Q. Was that the usual load that you had handled? A. Yes, it is our regular standard.

Q. And do you know why the usual practice wasn't followed on swinging it over to your left side? A. No, I couldn't say on that.

Q. Well, did you ever find out or ask?

A. No, I didn't.

Q. There was nothing wrong with the winches, was there?

A. There was nothing wrong with the winches, no.

Q. You blame your accident then on this sailor and the three cannery tenders?

A. Three cannery workers—inexperienced men.

Q. And the sailor was the deck delegate, was he?

A. Yes, he was experienced in handling salmon before.

(Deposition of Richard T. Hawley.)

Q. And was he giving orders at the time to them? A. Yes, sir.

Q. But he didn't give you any orders?

A. Yes, at the time—that is why we were working under his directions.

Q. Yes, but I say at the time of your accident he didn't tell you you were not swinging it the same way?

A. No, he didn't. You see, they were on the other side of the board.

Q. Now, you say that eventually you were going to land this pallet board, had planned to land it over where you put the letter "P"? A. Yes.

Q. What difference would it have made whether they swung it to the left or right?

A. We had more room to work on account of the cases of salmon being loaded in between the ladder and the forward bulkhead. We swung it out-board where there was more room to swing and give the board a chance to swing under the hatch coaming.

Q. Then you would want to swing the load out-board, wouldn't you, instead of clockwise?

A. No, we swing it clockwise in order to bring it around so the long side of the board would be facing forward and aft.

Mr. Franklin: That is all.

Q. (By Mr. Staley): This hernia you received on a previous ship, was that an inguinal hernia?

A. No.

Q. Or was it in the same portion of the body?

A. No, it was in the lower left hand side and below. At the time it happened I had a cold and I was walking down the ladder and I coughed and it popped out. The company paid me subsistence for 30 days but it was more medical than an injury.

Mr. Staley: That is all.

Mr. Franklin: That is all.

(Deposition concluded.)

Certificate

State of Washington,
County of King—ss.

I, H. W. Boylan, a notary public duly commissioned and qualified in and for the State of Washington, do hereby certify that pursuant to oral agreement of counsel for the respective parties there came before me on the 27th day of January, 1954, at 10:00 o'clock a.m., at 1001 Smith Tower, Seattle, Washington, the following named person, to wit, Richard T. Hawley, who was by me duly sworn to testify the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath and his examination reduced to typewriting under my supervision; that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is

taken, and further that I am not a relative or employe of any attorney or counsel employed by the parties hereto or financially interested in the action.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal at my office this 4th day of February, 1954.

[Seal] /s/ H. W. BOYLAN,

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed February 9, 1954.

In the District Court of the United States, Western
District of Washington, Northern Division

No. 3621

RICHARD T. HAWLEY, Plaintiff,

vs.

ALASKA STEAMSHIP COMPANY, a corpora-
tion, Defendant.

TRANSCRIPT OF PORTION OF
PROCEEDINGS

Transcript of portion of proceedings had in the above-entitled and numbered cause, before a Petit Jury, duly empaneled, and the Honorable William J. Lindberg, a United States District Judge, commencing at 10:00 o'clock a.m. on the 7th day of January, 1955, at Seattle, Washington. [1*]

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Appearances: Joseph S. Kane, of Kane & Spellman, 1001 Smith Tower, Seattle, Washington, appeared for and on behalf of the Plaintiff; and Robert V. Holland, of Bogle, Bogle and Gates, 603 Central Building, Seattle 4, Washington, appeared for and on behalf of the Plaintiff.

Whereupon, the following proceedings were had, to-wit: [2]

The Clerk: Richard T. Hawley vs. Alaska Steamship Company, a corporation, Cause No. 3621.

The Court: Is the Plaintiff ready?

Mr. Kane: The plaintiff is ready.

The Court: Is the defendant ready?

Mr. Holland: The defendant is ready.

The Court: The Clerk will fill the jury box.

(Whereupon, a Petit Jury was duly selected and sworn to try the within-entitled and numbered cause, and the following proceedings were then had, to-wit:)

The Court: It is now almost 11:00 o'clock. We may as well take the mid-morning recess.

Members of the Jury, before we hear from Counsel in the opening statements, we will take a short recess.

I caution you now, as those who have served before know, that you are to be cautious throughout the trial; do not form any opinion, not to discuss the case in any respect with one another, or with anyone on the outside when excused at noon, or in the evening, and you are not to form or express any opinions or discuss in any way the issues of this

case until it is finally submitted to you. Should there be any newspaper publicity of any kind in this case, you should avoid reading any newspaper accounts, or accounts of similar matters, while you are [3] serving on this jury.

This case, I assume, will not be completed today?

Mr. Holland: I think it may, your Honor.

The Court: It is possible it may?

Mr. Holland: Yes.

Mr. Kane: I think Monday morning, your Honor.

The Court: Well, I was going to say this:

In the event we do not complete it today, it will be continued until Tuesday, because Monday is what we call Motion and Law Day here, and other matters are taken up on that day; so that, if we do not dispose of it today, it will be continued over until Tuesday; but, certainly, if not completed today, it should be completed——

Mr. Kane: (Continuing) Tuesday morning.

The Court: Yes.

We will now take the recess, and the Court will remain in session while you leave, and you are to go up to the Jury room.

(Whereupon, the Jury retired from the courtroom.)

The Court: Anything to take up?

Mr. Holland: No, your Honor.

Mr. Kane: No, your Honor.

The Court: We will recess for fifteen minutes.

(Whereupon, at 11:00 o'clock a.m. a recess was had in the within-entitled and numbered cause until 11:15 o'clock [4] a.m. January 7, 1955, at which time the following proceedings were had, to-wit:)

The Court: You may call the Jury.

(Whereupon, the Jury was returned to the courtroom.)

The Court: You may be seated.

It is stipulated the Jury are present in the courtroom?

Mr. Holland: Beg pardon?

The Court: I just asked the stipulation that the Jury is present?

Mr. Holland: Yes.

Mr. Kane: Yes.

The Court: I don't think it is necessary in a civil case to require the stipulation so that we will pass it.

You may proceed, Mr. Kane.

Mr. Kane: Your Honor?

The Court: Mr. Kane.

Mr. Kane: Ladies and Gentlemen of the Jury:

In this opening statement, I am going to attempt to give you just a short summary of what I intend to prove to you to show that there has been negligence on the part of the Defendant in this action, and the injuries and damages sustained by the Plaintiff, Richard T. Hawley.

Mr. Hawley is a Merchant Seaman. That is, he sails [5] on commercial vessels in the engine department; meaning by that, he works down in the

engine room, wiper, water-tender, and related activities such as that.

On or about August 21, 1953, Mr. Hawley was a member of the crew of the Square Sinnet.

This vessel is operated and maintained by the Alaska Steam.

In the activities when they get into Alaska as quasi-seamen, engineers and longshoremen, Mr. Hawley, as part of his duties, left the engine room and was engaged in loading cargo, to-wit: cans of salmon in a port in Alaska.

While engaged in this work in one of these isolated ports, we will prove that in order to get this cargo on and stow it the way the company wanted, and to move it as the company wanted, Mr. Hawley, the plaintiff in this action, was placed in a precarious position, and, in carrying on these duties, we will prove that the company failed to have sufficient officers in charge supervising this hold No. 1 in which he was working down in the bottom of the vessel to see that the speed-up lowering of these pallet boards was done in a safe manner.

We will show that there were insufficient numbers of experienced men working along with the plaintiff in this action to insure his safety while he was engaged in this [6] activity.

We will also prove that this is the only way which Mr. Hawley has to compensate him for his injuries and damages.

This is the means by which a Merchant Seaman gets compensated.

We will attempt to prove that at all times he

conducted his activities as an efficient sailor should conduct them. He was placed in a position where he couldn't do anything and he is under quasi-military jurisdiction, and if he is told to do something, he has to do it.

We will prove he can't say "No"; if he is given an order, he must carry it out, and he can take it up later with the Coast Guard or the Union.

We will prove that at all times Hawley, the plaintiff in this action, did just what you or I or anyone else would do, and that there was no such thing as negligence on the part of Hawley.

I also want you to consider all of the evidence in this matter, and listen to the witness and look at the exhibits and evaluate that which you hear.

We feel as though you people are just ordinary people, just like Hawley and myself, and if we hear something, we can come to a conclusion. [7] You will also hear something about the preponderance of the evidence, what has to weigh in favor of the plaintiff or the defendant.

Now, all those terms in the law, even though they sound very fancy, His Honor will explain to you that they are very simple terms when defined and laid out and they are terms that the reasonable man can understand; and you can put yourself in the position of this plaintiff and say to yourself: "What would you expect?"

Now, in this matter here, we are asking for the sum of—

Mr. Holland: (Interposing) Now, if the Court pleases, in the pre-trial order, there is no mention

of any prayer in the pre-trial order. I don't think it is proper to mention it in the opening statement.

Mr. Kane: Your Honor, it is in the complaint.

Mr. Holland: The pre-trial order takes the place of the complaint.

Mr. Kane: Only as to the facts, your Honor.

The Court: Where it does take the place of the complaint, I don't think the amount is eliminated, is it? You don't take that position, Mr. Holland?

Mr. Holland: Well, I take the only position, Your Honor, that it is not contained in the order, and it isn't proper to mention it in the opening statement. [8]

Mr. Kane: Your Honor, it is our contention that the prayer—any fact in the complaint that is open to dispute—I mean, we don't consider the prayer as being facts. The pre-trial order just attempts to draw together disputed facts, and things which we need to prove.

Mr. Holland: The contentions which are disputed.

The Court: Of course, the maximum amount or amount prayed for would be a matter covered by the Court at the time of instructions. I think it is a matter that has to be taken up.

I think we might except it at this time, and I will take it up with Counsel, Mr. Kane, in the absence of the Jury.

Mr. Kane: All right, Your Honor.

Now, with that information, Ladies and Gentlemen of the Jury, we will call our first witness.

The Court: Do you reserve your statement, or do you wish to make it now?

Mr. Holland: I have a short opening statement.

The Court: All right.

Mr. Holland: If the Court please?

The Court: Mr. Holland.

Mr. Holland: ——and Ladies and Gentlemen:

The Plaintiff's attorney and I, of course, differ not at all on the majority of the facts in this case, so [9] that my opening statement need be only brief.

The facts of employment, and the type of work being done, and the cargo loaded, and the nature and construction of the vessel are things agreed upon.

There is one or two incidents at the time of the injury about which we do disagree.

I would wish to make a brief statement possibly to assist members—any members of the jury who may not have been aboard merchant vessels, or who have not observed cargo operations, to clarify initially, if I can, Ladies and Gentlemen, the construction of the vessel, and what the area is like where this accident happened.

I think the defendant's evidence, if not the plaintiff's itself, will show that the hold of the vessel may be likened to this entire room, a difference in size, generally, of course, but generally a large room like we are in now, and with an opening in the ceiling of the room, roughly, portrayed by the square in the ceiling, which is the opening down through which the cargo comes to the lower deck.

I would be then standing in the hold of the vessel, where Mr. Hawley was standing at the time of his injury the cargo being lowered down by the ship's gear.

I think the evidence will show that while Mr. Hawley [10] wasn't exactly standing on the bottom of the hold itself, that there had been layers of cargo and canned salmon in that hold, so that I might be up three or four feet to represent that, but I would be on a flat surface, much as the floor.

The evidence will show that as he stood in this position, the cargo was lowered down by means of a pallet board, which is a board construction—I think we may have some sketches and pictures of it—something like 4x5 feet, or 4x6 feet, on which the cases of salmon are placed, and the evidence, I believe, will show that something like 35 to 40 cases of this normal standard cardboard size boxes are placed on this pallet board in the one load, and that the total load would be somewhere around 17 or 1500 pounds.

The evidence will show that the board is then lowered down through this opening in the ceiling to the place close to the deck upon which I am standing, upon which Mr. Hawley was standing, and that the men working down below, I think there were about 8 or 10 men working below, and they would then move this about as they could and attempt to move it back towards the wings.

The evidence will show that the wings of the hold itself would represent part of the hold back away, not directly under the opening; if I were

under the opening, [11] I would get wet, but if I would be back in the wing; or aft, if the stern; or forward, if the bow.

The evidence will show that at the time of the accident, the men were there to take this load, as it hung in mid-air to unload, and to save themselves work, that they were just commencing at the time of the accident, they would move this pallet board over closer to where they wanted to unload it, and then they would move it over, and swing it like a pendulum, and when it got as far as they could swing it, why, they would then signal for the driver to drop it, not over here where it would naturally drop, but they might swing it over so far, and then they could unload the cases from here to there, and save a few steps.

The evidence will show that everybody down there had been following this procedure, and everybody, including Mr. Hawley, knew what was going on, and that at the moment of the injury claimed here, they were just turning this board, 4x6, from crosswise to lengthwise, the particular way they wanted to have it, in position, and the evidence will show that Mr. Hawley himself had his hands on the board, or a part of the gear attached to the board, and the other men had their hands on it, and that this heavy, 1500 or 1700 pound load, would swing just a quarter turn. [12]

It came down, we will say, lengthwise if this represents the board. They wanted to turn it a quarter turn, so that it would be crosswise with the ship.

You can follow the evidence on that.

In so turning it just the quarter turn, this very heavy load, as it started to turn, Mr. Hawley found it was not turning the way he thought it would turn, but the other way, and the evidence will show it pushed him in the stomach, or abdomen, and it didn't strike any hard blow, but in the nature of a glancing blow, but it would be only at the very beginning of this quarter turn of this very heavy object.

The evidence will show then that he complained following that, that he had certain drainage and difficulty in that particular area of his abdomen that he will describe for you.

The evidence will show that following the incident, Mr. Hawley received certain treatment at the Public Health Hospital in Seattle, and that following his convalescence, the evidence will show that he has had no permanent disability from the injury, and that he has returned to sea, and that he has been sailing substantially since the time of his becoming fit for duty since treatment, and that he is as fit as he was prior to the accident.

Mr. Kane: Mr. Hawley. [13]

RICHARD T. HAWLEY

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Kane): Now, if you will, Mr. Hawley, will you direct your remarks to the Jury?

(Testimony of Richard T. Hawley.)

Will you state your name, address and occupation?

A. My name is Richard T. Hawley, and I live at 912 First Avenue, Seattle, Washington, and I am a Merchant Seaman. I have been a Merchant Seaman for 31½ years.

Q. Now, what type of vessels have you sailed on during your career, Mr. Hawley?

A. I have sailed on practically every type there is that is going to sea now.

Q. And you mean by that, upon passenger and cargo?

A. Passenger and cargo, and steam schooners.

Q. And has your sailing career been devoted to the activities on the West Coast?

A. I have been on the West Coast ever since 1923.

Q. And have you ever sailed on previous occasions to Alaska?

A. I have some with the Coastwise Lines.

Q. And have you sailed to Alaska on previous occasions [14] with Alaska Steam?

A. I was on another, a few months before I was on the Square Sinnet.

Q. What documents do you hold from the Coast Guard?

A. I have Watertender, Oiler, and Wiper, and Lifeboatman.

Q. What was the last, please?

A. Lifeboat.

(Testimony of Richard T. Hawley.)

Q. Now, on board, what department do you sail in? A. I sail in the engineroom.

Q. Now, have you ever had any injuries other than this other injury that you received on August 21, 1953?

A. In 1937, I had a rupture, caused by a bad cold, on the American Mail Line. That was in 1946, I mean.

And, in 1935, I was—had a leg injury on the American-Hawaiian Steamship Company.

Q. Now, do you recall any other accidents that you had?

A. Well, I had a finger amputated in a machine shop when I was thirteen years old.

Q. Now, can you think of any other accident that you have had?

A. No other accident, at all.

Q. Now, you recovered from those injuries?

A. Yes, sir.

Q. And you had recovered from those injuries prior to [15] your sailing on the Square Sinnet?

A. Yes, sir.

Q. You never had any type of post-operative infections from those injuries?

A. Nothing at all.

Q. What was your answer?

A. Nothing at all. I never had no infections or anything.

Q. Now, or on about August 21, 1953, Mr. Hawley, what were you engaged in?

(Testimony of Richard T. Hawley.)

A. I was engaged in working cargo in No. 1 hold on the M. V. Square Sinnet.

Q. Now, what was that initial you gave?

A. M. V.

Q. What does that mean?

A. Motor Vessel.

Q. And the name of the vessel was what?

A. Square Sinnet.

Q. Now, when did you sign on that vessel?

A. I signed on around the first of August.

Q. Where did you sign the articles on that vessel?

A. Seattle, Washington.

Q. And where did you go to from Seattle?

A. We went to—we were in Kodiak and a couple of other ports in Alaska. [16]

Q. That is on the trip north?

A. That is on the trip north, yes, sir.

Q. Did you have general cargo on board?

A. General cargo going up; and on the way back, we loaded salmon.

Q. On the trip, up, did you assist in the loading of the cargo?

A. No, they have sufficient—in some of the ports, they have sufficient longshoremen; and in the cargo ports, they have longshoremen, but in the small canneries, they have to use the crew for longshore work.

Q. Now, on or about the 21st of August, 1953, Mr. Hawley, what port in Alaska were you in?

A. It was an Indian name, Uganic, on the island of Kodiak.

(Testimony of Richard T. Hawley.)

Q. Now, what duties were you engaged in on that day?

A. We were turned to to work cargo in the No. 1 hold.

Q. What time did you turn to?

A. We turned to at seven o'clock in the morning.

Q. Now, Mr. Hawley, what do you mean by the expression "turn to"?

A. That means time to go to work. You have six o'clock breakfast, and turn to to go to work at seven o'clock.

Q. And did you do that at that time?

A. I did.

Q. And what hold were you working in? [17]

A. No. 1.

Q. And what type of cargo were you——

A. (Interposing) We were loading cased salmon.

Q. You mean by that, you were taking cased salmon from the dock; you were part of the crew that were taking cased salmon from the dock and placing it on the vessel? A. Right.

Q. Now, what portion of the vessel were you working in?

A. On the port side of the ship.

Q. What do you mean by the expression, "the port side of the ship"?

A. Well, on the ship, the right-hand side is the starboard, and the left-hand side is the port.

(Testimony of Richard T. Hawley.)

Q. And what part of the deck were you working on?

A. We were working in the lower hold.

Q. What do you mean by that expression?

The lower hold, well, it is between decks and a lower hold. You have to go down a ladder into the bottom hold.

Q. You mean by that, the bottom of the ship?

A. The bottom of the ship.

Q. And you were down there, and you reported there at seven o'clock in the morning, and you were engaged in storing cargo?

A. Stowing salmon, yes, sir. [18]

Q. When you said you were on the port side, what was being done on the starboard side?

A. There were five men on each side. They have a gang of ten men in the hold, and they split them up, five on each side.

Q. Will you explain to the jury just how this cargo was being lowered down?

A. It was lowered down by a pallet board, and we had to go to work and get ahold of it, and swing it, and run it underneath the hatch coaming, as far as we could, in order to gain a little in lee-way so that four of us could work off the board at the same time.

Q. Now, what do you mean by that expression, four of you work off the board at each time?

A. Well, that is in order to get it in far enough so that one man could take each corner of the board and lift the salmon off and get it off as

(Testimony of Richard T. Hawley.)

quick as we could, so that we could get more loaded.

Q. In other words, you were taking the salmon cases and stowing them——

A. (Interposing) Stowing them in under the wing of the ship.

Q. And you were engaged at the time with the crew working on the port side wing?

A. Yes, sir.

Q. Now, how long had you been working there? How long [19] that morning did you work there?

A. I started at seven, and I got hurt at 8:30.

Q. Now, would you describe to the jury just what happened at approximately 8:30 the morning of August 21, 1953?

A. At seven o'clock in the morning, when we started moving cargo, there was five of us in the hold, together, and we had an agreement to swing the board clockwise.

Mr. Holland: Just a minute. The question was, what happened at 8:30.

The Witness: That is what I am coming to.

The Court: It is preliminary. That was the question.

Mr. Kane: Yes, your Honor.

Q. (By Mr. Kane): What happened?

The Court: If you will, start over again.

Mr. Kane: Will you have the reporter read his remarks, so far?

The Court: Mr. Reporter, read the answer.

(Whereupon, preceding answer was read by the reporter.)

(Testimony of Richard T. Hawley.)

A. We were swinging these boards——

Q. (By Mr. Kane): Now, you may continue.

A. (Continuing) And, in order to swing it clockwise, [20] I was walking on the forward side, on the inboard corner, and we were swinging it clockwise in order so that I could get out from behind, because we had three tiers of salmon already behind, already loaded, and I was underneath the hatch coaming, and the other three fellows were in the wing, and one fellow would take the after side of the inboard corner, and we would swing the board clockwise, and then swing it aft, and at 8:30, when I got ahold of the board, I was between the board and these cases of salmon, and the fellows made a mistake and swing it counter-clockwise, and they caught me between the cases of salmon and the board, and as soon as it happened, why, the fellow that was working on the same side of me was a ship's delegate for the Sailors' Department, and I reported to him to watch it, and be a little more careful because it hit me in the stomach with the board, and be a little more careful and we could go to work and swing it clockwise again, because there were three cannery workers in the hold, two young fellows and an old fellow who were inexperienced. They had never worked in the cargo before.

Q. Now, Mr. Hawley, you told the jury that you wanted to turn this pallet board clockwise. Will you explain to them what you mean by "clockwise", and what the purpose of that was?

(Testimony of Richard T. Hawley.)

A. The purpose of that was in standing inside underneath the wing, we have to get in out of the square of the hatch [21] while the load is coming in case one of the boxes or something should fall off, and I was standing in on the forward end, along these cases of salmon, underneath the hatch coaming, and the other four fellows were back in the wing, and the sailor delegate, he would come out from the after end and get the inboard corner, and I would walk over and grab the forward inboard corner, and I would swing it towards him and he would take the corner I got, and we would turn the load back three or four feet, and swing it as far as we could, to gain a little more leeway on the load.

Q. What was behind you, Mr. Hawley?

A. Three tiers of salmon, seven high, and we had filled the forward hold and we were working into the wing of the ship. We had to work from the center to the skin of the ship, so that there would be no holes left in order not to cause a hazard when somebody unloaded the ship.

Q. How far out in front of you was this platform of salmon packed to act as a receptacle for the pallet board when it came down?

A, From three tiers. You see, they were working under a hazard, because they had the after end of the hold——

Mr. Holland: (Interposing) If the Court please, I don't think this is responsive. Most of them have been leading.

(Testimony of Richard T. Hawley.)

The Court: I think the answers are not responsive in some degree. Much of it, however, is outlining [22] what happened. There are some answers that are conclusions that should be stricken.

Mr. Kane: Yes.

The Court: The last comment as to what the hazard was, may be stricken.

Mr. Kane: We have no objection.

Mr. Holland: May the jury be instructed to disregard it?

The Court: Yes. Matters stricken by the Court are to be disregarded by the jury, and that applies to any witness, and when there is objection, and the objection is sustained, the jury will disregard the question and any inference that may result.

So that, if you will, you may continue, Mr. Hawley, and if you will bear in mind in your answers the questions and, if he wants to enlarge, he will ask further questions. You may proceed. Do you want to re-state the question, or have it read?

Mr. Kane: Yes, if you will.

The Court: Have it read?

Mr. Kane: Yes.

The Court: The reporter will read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) To the section where the pallet board [23] was coming down, or the whole section entirely?

Q. (By Mr. Kane): Where the pallet board was coming down.

(Testimony of Richard T. Hawley.)

A. It was three feet from the edge of the cases of salmon where we were working.

Q. What do you mean by "three feet from the edges of the cases of salmon"?

A. You see, three loads of salmon in the forward end of the hold. There was about 24 inches clearance between there and the edge of the hatch coaming, and the pallet board, and the winch driver brings the pallet board down as close as he could, and as close to the hatch coaming as he could.

Q. In other words, he would bring it as close to your end as he could? A. As possible.

Q. Why would he do that?

A. On account of the loading of the hold, they have the booms swung out, because we were only working on the forward end of the hold.

Q. Well, now, who was the man working on the other side of you? A. Perry.

Q. Now, did you have an opportunity to observe where he was standing? [24]

A. They were underneath.

Q. Answer the question: did you have an opportunity? A. Yes.

Q. Now, will you tell us, or describe to the jury, where he was standing?

A. He was underneath the wing of the ship, and he would have to walk out on the outside of the pallet board, in order to get the corner on the inboard after end.

Q. Now, why would he have to do that?

A. Because on account of the load coming down,

(Testimony of Richard T. Hawley.)

for safety, everybody stepped underneath the hatch coaming, in case anything should fall off the load.

Q. How far behind him was the salmon packed, giving him this platform to work on?

A. Approximately five feet.

Q. Could he go beyond that, any farther than that? A. No, he could not.

Q. Why?

A. Because on the after end of the hold, they had fish meal loaded, and they had to leave a space between the fish meal and the cases of salmon in order not to cause damage.

Q. What do you mean by "in order not to cause damage"?

A. Well, this fish meal would soak into the cases and could spoil all the cases.

Q. In other words, there was a space—— [25]

Mr. Holland: (Interposing) This is leading, if the Court please.

Mr. Kane: I will withdraw the question.

Q. (By Mr. Kane): (Continuing) What was the distance between the fish meal and the cans of salmon? A. About four feet.

Q. And how high up was Mr. Perry working?

A. We were eight tiers up, eight cases of salmon high. That would be about twelve feet off the bottom of the deck.

Q. In other words——

Mr. Kane: I will withdraw that.

Q. (By Mr. Kane): (Continuing) Now, **Mr.**

(Testimony of Richard T. Hawley.)

Hawley, how many men were in this gang that you were working with? A. There was five.

Q. Five men; you have said that Mr. Perry was one. Who were the others?

A. There were three cannery workers, two young fellows, one about eighteen and one about twenty, and then another fellow was about forty.

Q. Now, where was this cargo coming from?

A. Out of the cannery.

Q. Well, I am presuming that; but, more closely, immediately, to you? [26]

A. Well, they were taking it off the dock and swinging it over into the holds.

Q. Where were these pallet boards loaded?

A. They were loaded on the dock, and they were taken down in a jitney and packed in front of the ship, and from there picked up by winches and loaded into the hold of the ship.

Q. Now, did you ever have any occasion to see any mates observing this loading operation?

A. There was one mate in charge; he was in charge of all the holds. He traveled up and down from one hold to the other, at periods of times.

Q. Had you seen him at all that morning?

A. We seen him in the mess room when he come and turned us to.

Q. Now, who was in charge of this operation here?

A. Well, there was nobody but on the agree-men on each side of five men working, they always picked one man out in order to run the gang.

(Testimony of Richard T. Hawley.)

Q. Was that done at this time?

A. Well, the way we agreed on Mr. Perry taking over and any instructions he gave, we would observe.

Q. Now, had you an occasion during this time of loading to see this pallet board coming down?

A. No, we were underneath the hatch coaming until the [27] board came down level with us, and then we would walk out and get ahold of it.

Q. You never had an opportunity to observe this pallet board coming down below the square of the hatch?

A. We always watch the bottom, because on account of the swinging motion, or coming too fast, if there were any tips or anything like that, you always watch up in order to see if anything was wrong with the load before you stepped out into the center of the hatch.

Q. Now, did you have, at this time, any occasion to observe it?

A. At that time, we were watching the board and it was coming pretty fast, and they were loading——

Q. (Interposing) That is the next question I will ask you, Mr. Hawley. Will you describe to the jury how the pallet board was coming down?

Mr. Holland: Now, if the Court please, the witness said he did not observe it.

Mr. Kane: I thought he did.

The Court: He didn't directly answer the ques-

(Testimony of Richard T. Hawley.)

tion, I don't believe. You may ask him that question, Mr. Kane, if he observed it.

Q. (By Mr. Kane): Had you at any occasion from the time you went to work there observed this pallet board coming down? [28]

Mr. Holland: Now, if the Court please, that is immaterial, since Counsel changed that to include the whole morning. I understood he was referring to this particular load. Any other loads would be immaterial what happened.

Mr. Kane: All right, I will confine it to this particular load, if Counsel wants me to.

Mr. Holland: Yes, sir.

Q. (By Mr. Kane): (Continuing) Had you an occasion to see this load coming down on the pallet board? A. We watch every load.

Q. Answer. Go ahead. That is not responsive.

The Court: The question is this load. Did you see this load?

The Witness: Yes, I seen this load coming down.

Q. (By Mr. Kane): Now, will you describe to the jury how this particular load came down?

A. She came down in a swinging motion, and as we walked out and got ahold of the lines, we always walk out to get ahold of the lines, more or less every load swings a bit, and each one grabbed the line to stay the load before we could swing it underneath the hatch coaming.

Then we walk out to the center of the hatch and [29] push it in as far as we could. That is the

(Testimony of Richard T. Hawley.)

proper procedure we were going through all morning.

Q. Now, at that time, Mr. Hawley, did you see any hatch-tender up in the square of the hatch giving any signals to the winch driver?

A. From down——

Q. (Interposing) Answer the question “yes” or “no”.

A. No, you cannot see from the port side.

Q. You couldn't tell whether there was anybody up there or not? A. No, couldn't tell.

Q. Now, you have testified previously that behind you was this—these cases of salmon, a regular wall of salmon, is that right?

A. That is correct.

Q. Was there anything else around that immediate area?

A. An escape ladder right in the center of the hatch, in the center of the loads. The starboard gang works from one side of the ladder, and the port gang from the other side of the ladder.

Q. Now, Mr. Hawley, what do you mean by the expressions “escape ladder”?

A. Well, there is a ladder to get from the lower hold to the bottom deck, and then another ladder from the bottom [30] deck the main deck that goes through the escape hatch.

Q. In relation to this ladder here, where were you standing?

A. I was standing three feet inside the ladder on the port side.

(Testimony of Richard T. Hawley.)

Q. Now, when you testified you were standing inside three feet, do you mean you were——

A. (Interposing) From the edge of the ladder.

Q. And that is, towards the port side of the vessel?

A. That is towards the port side of the vessel.

Q. Now, when one pallet board would go up, would another pallet board come down in the same side, or location?

A. No, after we had landed our load, we would take the bridle off, and they would move it over to the other side of the ship and pick up an empty board and the next load would go to the starboard side, and then we would take the bridle and hook onto our empty board, and have that taken out and wait for the next load.

Q. Will you describe to this jury here the area in which you had to work, as this pallet board came down and you were swinging it in relation to distance?

A. Well, I would say we were only using the forward half of the hold, and from the tier of salmon where we already loaded, and we put in three tiers in the square of the hatch, I would say about 15 feet. [31]

Q. That is the whole area?

A. No, that is straight back, and then across the whole ship.

Q. Now, when this pallet board would come down, how close would it be to you?

A. It would be within three feet.

(Testimony of Richard T. Hawley.)

Q. Could you step back at all?

A. You couldn't step back. You could step back underneath the hatch coaming while it was coming down, but when the board was swinging that way, I was caught between——

Mr. Holland: (Interposing) The question has been answered, if the Court please.

The Court: The Court will caution the witness to listen to counsel's question, and try and answer directly without the explanation. Then if counsel desires, he can ask you to explain it.

Now, I am going to strike this answer, and ask the reporter to read the question and listen to the question, and attempt to answer it. And, Mr. Kane will ask you to explain it, if he thinks you should.

(Whereupon, the last question was read by the reporter.)

Q. (By Mr. Kane): Just answer "yes" or "no". A. No. [32]

Q. Now, what prevented you from stepping back, Mr. Hawley?

A. Three tiers of salmon that we had already loaded in the forward part of the hold.

I either had to go to the starboard side, or the port, in order to get out of the way.

Q. Now, why didn't you go to the starboard side?

A. Because, on account of the ladder at the time, and the pallet board was down too close. It was swinging in, and I could not move on account of the ladder. I was between the ladder and the

(Testimony of Richard T. Hawley.)

pallet board, and if I had turned around, and went the other way, which is about nine feet, I would have got hit in the back with it.

Q. As you say, if you went the other way—what way is that?

A. To the skin of the ship.

Q. On what side of the ship? A. Port.

Q. Now, will you try to describe just as well as you can how this pallet board was sitting when the man grabbed it, to move it?

A. She was in a 'thwartship position.

Q. I think you had better explain to the jury what you mean by "thwartship position". There is a long side and a short side to the board, and we have always tried to get the [33] long side in and swing it under so that we could work off the corners, and if you come down athwartship—that is, crossways—we would swing it one-quarter turn in order to bring it underneath the hatch coaming and set it down in the proper position.

The Court: It is twelve o'clock, Mr. Kane. Do you wish to recess now?

Mr. Kane: Yes, sir.

The Court: Members of the Jury, we will now take the noon recess, and the Court calls your attention to the admonition I gave you at the time of the mid-morning recess, and asks you to heed it on this occasion.

You may now be excused, and come back about ten or fifteen minutes early. You may now be excused.

(Testimony of Richard T. Hawley.)

(Whereupon, the jury retired from the courtroom.)

The Court: What testimony do you have, Mr. Kane? Do you have medical testimony?

Mr. Kane: Yes, your Honor. We will have a doctor, and we also have two depositions.

The Court: Any other live witnesses?

Mr. Kane: And the Marine Hospital.

The Court: I doubt very much if we can finish this afternoon.

Mr. Kane: I would rather go over until Tuesday morning on account of the Doctor. Yesterday was a day off for the [34] medical profession in town, and I couldn't get ahold of him at all, and I couldn't get ahold of him Wednesday.

The Court: I have in mind, even if we finish the testimony, it will be close to six o'clock, and with argument, and we had a jury out until midnight last night, I don't want to go through the same long day again, not only for myself, but for the rest of the personnel.

Mr. Kane: If agreeable with counsel, we can put everything in today.

The Court: If you get your testimony in, we can start earlier on Tuesday, if you want to.

Mr. Holland: Anything is agreeable.

Mr. Kane: Yes, sir.

The Court: So that, unless testimony is completed today by 3:30 or something like that, if you can have your testimony by that time, I might go on, but if it is any time after that, I wouldn't.

(Testimony of Richard T. Hawley.)

The Clerk: We have two pre-trials Tuesday.

The Court: Well, we would have to start at ten o'clock.

Mr. Holland: Yes, sir.

The Court: We will recess now until two o'clock.

(Whereupon, at 12:05 o'clock p.m. January 7, 1955, a recess was had until 2:00 o'clock p.m. January 7, 1955, [35] at which time the following proceedings were had, to-wit:)

The Court: You may call the jury.

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated.

Mr. Hawley, the plaintiff, will resume the stand.

Mr. Kane: I would like to have the easel, if it please your Honor.

The Court: Yes, the Bailiff will get it.

Can you proceed with something else, while you are getting it?

Mr. Kane: Yes, sir.

Q. (By Mr. Kane): Now, Mr. Hawley, did you make a drawing or sketch of the vessel which you were working on? A. Yes, sir; I did.

Q. That is, did you make a drawing or sketch of the vessel as it was in the No. 1 hold on or about August 21, 1955?

A. Yes, as far as my knowledge is, and the best of my ability.

Q. And, in that drawing, you designated just where the cargo was, and the pallet board?

A. Yes, sir.

(Testimony of Richard T. Hawley.)

Q. And you also designated the particular area where [36] the men were working; you identified those areas?

A. Yes, sir.

Q. Now, what are your duties as a wiper aboard this vessel, the Square Sinnet?

A. Well, the duties of a wiper is to do any cleaning or assist in the engine in any repair work.

Q. Now, in what area of the ship is your work usually confined to?

A. To the engine room.

Q. Now, what were the circumstances of your doing the stevedoring work?

A. Well, they have a contract with the Fireman's Union that any time there is no longshoremen available, that the Fireman's Union has agreed to assist the sailors in helping unload cargo.

Q. And you were directed by some member of the staff of the vessel to join this group in No. 1 hold?

A. As is custom with the Alaska Steam, any day workers or anything else, the first engineer, the first mate and first engineer has him knock any day man off he doesn't need down below, in order to help work cargo as per the agreement.

Q. Now, who directed you to the No. 1 hold?

A. The first assistant came down and told us that the mate needed some men on deck, and it was all right to go up and turn to and work cargo in the holds. [37]

Q. Who told you to go to the No. 1 hold?

A. That was the first mate.

(Testimony of Richard T. Hawley.)

Q. And who did you report to there?

A. I reported to the delegate, the Sailors' delegate.

Q. Now, who was the Sailors' delegate?

A. Mr. Perry.

Q. What function did he have there in this hold?

A. Well, he is the Sailors' delegate. He takes— keeps track of all time and all the men working in the hold, and keeps track of the time.

Q. Does he do anything besides this bookkeeping?

A. Well, he works in the hold himself.

Q. Does he do anything in regards to the cargo?

A. He was working in the hold at the same time we were.

Q. Does he have anything to do with the supervision or direction of the work?

A. Well, in a way, but the mate in charge is supposed to go from one hold to the other.

Mr. Holland: If the Court please, this is not responsive to the question.

The Court: Objection sustained. Again, Mr. Hawley, I will ask you to listen to the question, and then attempt to answer it as Mr. Kane puts it to you, and if he wants explanation, he will ask you for it.

The Witness: All right. [38]

Q. (By Mr. Kane): Does this delegate, Mr. Perry, have anything to do with the supervision, how the men are distributed?

(Testimony of Richard T. Hawley.)

Mr. Holland: That is objected to as leading.

Mr. Kane: I will strike the latter part.

Q. (By Mr. Kane): (Continuing) Answer "yes" or "no".

Mr. Holland: Well, it is still leading.

The Court: Having anything to do with supervision, that was the question?

Mr. Holland: Yes, I would say that was leading.

The Court: He may answer "yes" or "no".

Mr. Kane: As to whether he does or does not.

The Court: Yes.

A. Yes; yes, he has charge of the——

Q. (By Mr. Kane): Now, just say "yes" or "no". A. Yes.

Q. Now, what are his duties there as far as you know from your activities in this No. 1 hold on the 21st of August, 1953?

A. Well, he is, according to their agreement, he is, supposed to see that there is a full capacity of men in the hold at all times.

Q. What did he do this day when you reported down [39] there? You reported to Perry, what did he do?

A. Well, there was ten men sent to the hold at one time, and he divided them up into two different groups.

Q. Did he do anything else after that?

A. And in making up the gangs, he put two sailors and three from the engine room on one side, and him and three cannery workers and myself on the other side.

(Testimony of Richard T. Hawley.)

Q. And he directed you and told you where to work?

A. Yes, he directed me where to work.

Mr. Holland: If the Court please, this exhibit has not been identified or marked, and it is being exhibited to the jury.

The Court: Is this covered by your pre-trial order?

Mr. Holland: No, it is not.

The Court: I think you had better identify it.

Mr. Kane: I am, your Honor. I will do it right now.

The Court: Ordinarily, it should be identified before it is showed.

Mr. Kane: All right.

The Court: However, if he can identify it—

Mr. Kane: (Interposing) I thought I laid a foundation, that he had made it.

The Court: You haven't connected it yet.

Mr. Kane: That is what I will do now. [40]

Q. (By Mr. Kane): Mr. Hawley, showing you the diagram on the easel, will you tell us what that is?

A. That is as close as I can come to where the cargo and the different tanks and different things, cargo and everything, is in No. 1 hold, at the time we were working in the No. 1 hold.

Q. Where was this diagram drawn, Mr. Hawley?

A. I drew it up in your office, one day, when I was out from the hospital there.

(Testimony of Richard T. Hawley.)

Q. Now, Mr. Hawley, did you also draw another diagram there?

A. Yes, I drew a couple of diagrams.

Q. I show you this, Mr. Hawley, and ask you to tell me what that is.

The Court: You had better have it marked first, Mr. Kane, just for identification.

Mr. Holland: May we have the other one marked, too, your Honor?

The Court: Yes, we will mark them both for identification.

You had better mark this one, too, and that one, "1".

The Clerk: I can go over there and mark it.

The Court: All right. She will mark it over there, Mr. Sommervel. [41]

The Clerk. Plaintiff's exhibit 1 marked.

(Plaintiff's Exhibit No. 1 marked for identification.)

The Court: The record will show that that is what the plaintiff was first referring to here, when talking about a chart.

Mr. Holland: Agreeable.

The Clerk: Plaintiff's Exhibit No. 2 marked.

(Plaintiff's Exhibit No. 2 marked for identification.)

Q. (By Mr. Kane): Now, Mr. Hawley, I am showing you Plaintiff's Exhibit 2, and ask you to tell the jury and Court what that is?

A. That is the drawing I made myself, with my own hands, and my own handwriting on it.

(Testimony of Richard T. Hawley.)

Q. And what is that drawing an impression of?

A. That is the impression of the No. 1 hold, and the different parts of the hold, and the cargo spaces.

Q. Now, Mr. Hawley, I would like you to come up here to the easel and mark with this pencil where you were standing. That is, mark on Exhibit No. 1 just where you were standing.

Mr. Holland: If the Court please——

The Court: (Interposing) Just a moment. It isn't admitted, yet. [42]

Mr. Kane: Well, I didn't want to have it admitted until I had it marked.

The Court: Well, I think that is testimony, and I think it has to be admitted before he can testify to that.

Mr. Kane: Well, at this time, I will offer it.

Mr. Holland: May I ask the witness about it, your Honor?

The Court: Yes, you may.

Mr. Holland: Mr. Hawley, Plaintiff's Exhibit No. 1, which is on the blackboard, was drawn by you yourself, was it?

The Witness: Yes, sir.

Mr. Holland: I understood you told us that Plaintiff's Exhibit 2, you said, was a drawing that you drew yourself. I thought that you emphasized that No. 2 you drew yourself. Did you mean you drew both?

The Witness: No, this was a copy of No. 2.

Mr. Holland: Then did you draw No. 1?

(Testimony of Richard T. Hawley.)

The Witness: No, I assisted in it. Mr. Kane did it.

Mr. Holland: I see; and did he use Plaintiff's Exhibit No. 2?

The Witness: He took it off of Exhibit No. 2, yes, sir.

Mr. Holland: I see, and as far as you recall, does that substantially show the condition of the hatch? [43]

The Witness: That shows the condition of the hatch at the time I got hurt.

Mr. Holland: Now, in that picture, or in that drawing, Mr. Hawley, it appears that we are looking at the ladder. Is that the way the ladder is?

The Witness: No, the ladder is the other way.

Mr. Holland: Then, actually, if we were looking at the ship that way, we couldn't see the rungs, could we?

The Witness: No, sir.

Mr. Holland: Is there any other part of that chart that isn't exactly the same as you recall it?

That part is different, you admit that?

The Witness: The ladder wasn't in there.

Mr. Holland: Is there any other part of the chart different than the ship was?

The Witness: No.

The Court: What was your answer?

The Witness: No, sir.

Mr. Holland: We have no objection.

Mr. Kane: I will offer Exhibit No. 1 in evidence, your Honor, and also Exhibit No. 2.

(Testimony of Richard T. Hawley.)

Mr. Holland: May I see Exhibit No. 2, please?

Well, if the Court please, I find on the sketch, on Plaintiff's Exhibit No. 2, there is a narrative summary of what the witness claims happened, and I don't think it is [44] proper. I have no objection if that part is removed.

Mr. Kane: I have no objection to removing it.

The Court: No objection to removing it?

Mr. Kane: No.

The Court: Can you just clip it off?

Mr. Holland: I have no objection now to Plaintiff's Exhibit No. 2.

The Court: All right, Plaintiff's Exhibits 1 and 2 for identification may be admitted.

(Plaintiff's Exhibits 1 and 2 received in evidence.)

Q. (By Mr. Kane): Now, Mr. Hawley, I would like you to come to the easel here and mark on Plaintiff's Exhibit 1 just where you were standing.

(Whereupon, the witness went to the exhibit and marked it as directed.)

Q. Now, how have you marked that, Mr. Hawley?

A. I was on the port side of the ladder.

Q. Why don't you stand back so that the jury can see it? How did you mark it?

A. That is where I was standing in the hold.

Mr. Holland: I will stipulate he put an "X" by the spot. [45]

Q. (By Mr. Kane): You marked an "X" indicating the place where you were standing?

A. I marked an "X" where I was standing.

(Testimony of Richard T. Hawley.)

Q. Now, you were asked, in identification of the diagram, the manner in which the ladder was running up and down in the vessel.

A. The ladder was running up and down on the forward end of the hatch.

Q. Now, would you explain to the jury how you would turn that ladder around which would give it a replica of the area in which you were working?

A. The ladder was salmon loaded from this side of the ladder out to the side of the ship.

Q. You are not answering. How was the ladder? was it against—

A. (Interposing) It is against the salmon here. There was salmon loaded up behind it all the way to the top.

Q. In other words, if we were looking at the vessel from the position you were in, all we could see is the outer room?

A. The outer room, and three tiers of salmon behind.

Q. With the cargo already loaded?

A. With the cargo already loaded.

Q. Now, Mr. Hawley, would you mark on the diagram where Mr. Perry was standing? [46]

A. Mr. Perry was back in the wing of the ship, over here. I will mark it with a "P". He was in the wing of the ship.

Q. And where were the other men standing that were working with you?

A. They were alongside of Perry, underneath

(Testimony of Richard T. Hawley.)

the hatch coaming back in here. I will mark 1 and 2, and the other fellow was over on this side.

Q. Now, what side of the vessel were they on?

A. They were on the port side.

Q. Now, what is that squared off area in which you were standing upon?

A. That is 8 tiers of salmon, already loaded.

Q. And what was the area between the back of the ladder and the bulkhead, or——

A. (Interposing) Between where?

Q. Between the back of the ladder and the bulkhead or deep tank?

A. There was three tiers of salmon in there.

Q. Would you put an "X" there, and would you put an "S" on the platform of salmon which you were standing on?

A. This was 8 tiers high.

Q. Now, Mr. Hawley, would you explain to the jury what is this area back here where you have that line drawn?

A. Back in here, they loaded—— [47]

We went to some little port right out——

The Court: (Interposing) Just say what it was.

The Witness: Fish meal.

Q. (By Mr. Kane): Put the letter "M" there. What is the connotation of that line that has that particular angle, Mr. Hawley?

A. That is the sacks of fish like the way they were stacked, because they wouldn't stack straight, because they were loose. They were loose sacks,

(Testimony of Richard T. Hawley.)

weighed about 150 pounds, and it was fish meal, fertilizer is what they call it.

Q. Now, Mr. Hawley, what was in that space between the salmon and the fish meal?

A. There was nothing in the space. There was a four-foot space left here in case these sacks lowered down, so that it wouldn't get against the cases of salmon, and spoil the cargo.

Q. Could you give us a replica of how this cargo came down? Show the members of the jury a replica.

The Court: Why don't you turn it back this way, and the jury can see? If you can't see, Mr. Holland, you can come up here.

Mr. Holland: Thank you.

A. That is from the winches on the pallet board we were working on. [48]

Q. (By Mr. Kane): Now, Mr. Hawley, will you describe to the jury now how you were working in this area when that pallet board came down with that cargo on it?

A. There is one little fact missing, right in here, from the between deck where the hatch coaming comes down on the other side of this here.

Mr. Holland: That is objected to as not responsive.

Mr. Kane: May he read the question?

The Court: The reporter will read the question.

(Whereupon, preceding question was read by the reporter.)

A. (Continuing) I was standing forward here

(Testimony of Richard T. Hawley.)

underneath the hatch coaming, and I would walk out and take one corner of the sling and Perry would walk out and catch the other corner of the sling, and the other three fellows would take the other side, and we would swing the load around, and underneath where we wanted to work.

Q. (By Mr. Kane): What happened at the time you were injured? Will you tell the jury that?

Mr. Holland: This is repetitious, unless counsel is asking that some mark be put on the diagram.

Mr. Kane: I want him to show by the movement of the pallet board, your Honor.

Mr. Holland: I object, except any movements or where [49] he went that doesn't show in the record. If he wants to draw the diagram again, without marking, all right. I think it shows in the record. If he plans to mark it, it is all right.

The Court: Is there any further marking?

Mr. Kane: Yes, he is going to mark where he was struck, your Honor.

The Court: If he can, do so.

A. I was underneath the hatch coaming here, and I stepped down into the center of the hatch to grab ahold of this corner of the pallet board here, and in the meantime, they swung counter-clockwise, instead of clockwise, and knocked me back against the cases of salmon, just past the ladder. I could not jump out, because the ladder was on this side of me, and on the other side, I had too far to go.

Q. (By Mr. Kane): At any time, did you ask

(Testimony of Richard T. Hawley.)

them to drop the pallet board away from you, farther away?

Mr. Holland: Objected to as leading.

The Court: Objection sustained.

Mr. Kane: I will withdraw the question, your Honor.

The Court: Are you through? Is he through there?

Mr. Kane: No, your Honor.

The Court: All right. [50]

Q. (By Mr. Kane): Mr. Hawley, will you tell the jury why the pallet board came down in this particular place, if you know?

A. Working in the small space area here, they brought this pallet board down as close to the forward end of the hold as they could in order to give the men in the after end space to get out and work on the pallet board at the same time.

Q. Now, is there any railing or anything up in the rear area where Mr. Perry was working?

Mr. Holland: Objected to as leading, if the Court please.

The Court: Objection sustained.

Q. (By Mr. Kane): (Continuing) Now, after you were injured on this vessel, Mr. Hawley, what did you do?

A. As soon as I got hit with this load of salmon, I went to work and told Mr. Perry, I said—

Mr. Holland: (Interposing) Now, I object to any conversation with Mr. Perry.

Q. (By Mr. Kane): Just tell what you did.

(Testimony of Richard T. Hawley.)

A. I reported to the Sailors' delegate that I got hit, and to watch it in the near future.

Q. What did you do after that?

A. We continued working until 11:40. [51]

Q. And what took place after that?

A. At 11:40, I was lifting up a case of salmon, and it slipped out of my hands, and I couldn't lift any more, and I rode the pallet board up on the next load, and knocked off.

Q. What do you mean by "knocked off"?

A. I quit. I went up and went to bed.

Q. Did you report to anyone at that time?

A. I reported to Perry.

Q. When you were leaving?

A. When I left the hold.

Q. Now, did you seek any medical attention when you went up?

A. No, I went up and laid down in my bed, and I figured I might be all right at 1:00 o'clock again.

Q. Did you have any dinner at that time?

A. I did not.

Q. And what did you do at 1:00 o'clock?

A. At one o'clock, the boatswain come and asked me if I was turning to, and I told him no, that my stomach was paining me, and I stayed in bed.

Q. And what happened after that?

A. I fell asleep, and I woke up at six o'clock at night, and I went to the first mate's room for medical treatment.

Q. And did he give you any medical treatment at that [52] time?

(Testimony of Richard T. Hawley.)

A. At that time, he told me that the third mate was in charge of the medical treatment, and that the third mate was in charge of the medical treatment, and that the third mate was in bed, and I knocked on the third mate's door, and he did not answer, and I went back and reported to him that the third mate was asleep and wouldn't answer his door, and he told me the third mate would be up at midnight and to come back then, and I told him at that time I got hurt in the hold, and I would like some liniment and thought I had a bruised stomach.

Q. Did you have occasion to observe your stomach?

A. No, at that time, it was just a little swollen.

Q. Your answer is "Yes, it was swollen"?

A. Swollen.

Q. Then, at 12:30, did you see the third mate?

A. No; at nine o'clock when coffee time came, I called up the engine room delegate, Mr. Sousa, and asked him to go and see the captain and the first engineer and ask them if they could get any medical treatment. If not, I wanted to go to a doctor at eight o'clock in the morning.

Q. And what was the result of that?

A. Sousa went and seen the captain, and the chief engineer, and they came down to my quarters.

Q. And did you get any medical attention at that time? [53]

A. The first engineer went up to the third mate

(Testimony of Richard T. Hawley.)

and got the third mate up and got some liniment to give to me.

Q. And did you put liniment on?

A. I put liniment on my stomach.

Q. Did you have any occasion to observe your stomach at that time?

A. It was still swollen at that time.

Q. What was the color of it?

A. There was swelling in about one foot area, and a little swelling, and kind of red, and I put some kind of liniment in the medicine chest on, that is all they had, and I went back to bed, and I got up at five o'clock in the morning and I looked at it, and it was draining and blood was coming out of my navel, so I went and woke up the third mate again, and the only kind of medicine he had was camphor liniment, and he went up and got the medical book and looked in that, and he couldn't find anything he could do for me.

Q. And then what happened?

A. At eight o'clock in the morning, I reported back to the chief engineer, and asked if I could be taken to a doctor, and they said I would have to go clean across the Island. There was no doctor available.

Mr. Holland: If the Court please, I realize this is part of the aftermath of the injury, but no claim is made [54] for inadequate medical treatment.

Mr. Kane: I will say that the latter part, that there was no doctor that was available, may be stricken. I am interested in the chronology of events.

(Testimony of Richard T. Hawley.)

The Court: The portion of the answer——

Mr. Kane: (Interposing) That recites there was no doctor, except so many miles away——

Mr. Holland: (Interposing) And my objection also will go to any further testimony about what the ship's officers did or did not do for him except it bears on the chronology, because again, there is no claim there was inadequate medical treatment.

Mr. Kane: We have no objection.

The Court: All right, the portion of the answer relating to any testimony at this time, members of the Jury, which may relate to doctors being there or attention being given or not being given is therefore, disregarded, insofar as it may be the ground of any damage. If it comes in, it merely comes in to indicate the course of events.

Mr. Kane: Yes, sir.

The Court: All right.

Q (By Mr. Kane): Now, did you continue to work below—rather, in the engine room for the continuation of the journey? [55]

A. I did not, but on Wednesday morning, I reported to the first assistant, and told him that I turned to, and any light work—that I couldn't do any lifting or anything else, and he said not to turn to, by the chief's order until I seen a doctor and was examined.

Q. And what direction was the vessel headed for at the time?

A. It was headed for Seattle.

Q. And when did you arrive in Seattle?

(Testimony of Richard T. Hawley.)

A. We arrived in Seattle Saturday night on the 30th.

Q. The 30th of what? A. October.

Q. Your injury took place on August 21st?

A. I mean August 30th. I mean August.

Q. Now, what did you do when you arrived in Seattle?

A. On Saturday night, the Marine Hospital was closed, and on Sunday, and on Monday morning I reported and was examined by the doctor, and the doctor advised me to come into the hospital, but I told him the ship was going to pay off in a day or so, and I wanted my clothes off and I had to take a report back to the first engineer I was not fit for duty any more.

Q. Did you do that? A. I did.

Q. Did you have at that time an occasion to observe your [56] stomach in the area?

A. It was still draining.

Q. And when did you become an in-patient in the hospital, if you did?

A. On September 2nd.

Q. And how long did you remain in the hospital at that time?

A. I was in there from September 2nd until October 20th. I had one major and one minor operation in the meantime.

Q. And then were you discharged on October 20th?

A. October 20th I was discharged as an out-patient.

(Testimony of Richard T. Hawley.)

Q. And how long did you remain an out-patient?

A. Until on December 15th, and then I had an infection set in, and——

Mr. Holland (Interposing): This is not responsive.

Q. (By Mr. Kane): Then what happened on December 15th?

A. I reported to the Hospital and they put me in for four days.

Q. That is, you reported at that time because there was something wrong with you?

A. Yes. At the time of the operation, they took an area of two and one-half square inches out of my stomach, lining of my stomach, and left a hernia there.

Q. And what was done at the time when you went back into [57] the hospital?

A. At the time I went back into the hospital, they thought it was just a drainage, and there was still a little drainage there, and they wanted to get it down, but when I was discharged, the surgeon told me to go out and make a trip for three to six months and then come back, and the scar tissue would heal over, and they would go to work and perform the operation on the hernia.

Q. What was the cause of this hernia, if you know?

Mr. Holland: If the Court please, I think that is a medical question. I don't think the witness should be——

(Testimony of Richard T. Hawley.)

Q. (By Mr. Kane) (Interposing): Were you complaining of any hernia prior to this incident?

A. No, it was caused by the operation.

Q. Now, sometime in December of 1953, did you return to the Marine Hospital?

A. On December 23d I reported into the Marine Hospital on account it started to break open and drain again, and I reported into the Marine Hospital, and Dr. Walker, the head surgeon, instructed me, instead of waiting three to six months, to return to the hospital and they would fix it up then, and he told me to report back the day after Christmas, because there was no more operations until after the holiday, and I entered the hospital December 26th and was operated on again the [58] 29th.

Q. 29th of what month? A. December.

Q. 1953? A. 1953.

Q. And how long did you remain in the hospital as an in-patient?

A. I remained there for one month.

Q. And when did you come out of the hospital?

A. January 26th.

Q. And this was 1954? A. This was 1954.

Q. And what did you do at that time?

A. I was an out-patient for a period of fourteen days or so, and then I was marked fit for duty in thirty days, and before the thirty days, it was open again. I was marked fit for duty February 11th.

Q. And what happened after that?

A. I just don't recall the date, but the stitches gave out, and the hernia returned and I had to

(Testimony of Richard T. Hawley.)

return to the hospital again for another operation.

Q. And when did that operation take place, approximately. A. About March 31st.

Q. And did you leave the hospital after that operation? [59]

A. On that operation, the head surgeon in the Marine Hospital took me and put two layers of wire in and I have two layers of wire in my stomach over the hernia section, and I was discharged and not fit for duty for thirty days, and I was fit for duty on June 15th of 1954.

Q. Now, approximately how much time did you lose from your employment, Mr. Hawley?

A. Ten months.

Q. Now, how do you compute that?

A. I don't quite understand that.

Q. Well, what are the months that you figure that you have lost employment?

A. I lost ten months altogether, right from October up until last June, the 30th.

I wasn't able to work at any time during that period.

Q. And you were declared fit for duty on June, 1954?

A. On June 30th is the first time I went to work.

Q. When did you first go to work, Mr. Hawley?

A. June 30th.

Q. What did you ship as at that time?

A. I shipped as wiper on the Shooting Star, American President Line.

Q. How long did you remain on that vessel?

(Testimony of Richard T. Hawley.)

A. Four months.

Q. What is your average monthly earnings, Mr. Hawley? [60]

A. Average monthly earnings in the capacity of—as a wiper, or as an average?

Q. Yes, your average monthly earnings?

A. I averaged around \$550 per month plus my room and board.

Q. How much do you compute your room and board as amounting to, Mr. Hawley?

A. Board and room, what we call subsistence, eight dollars a day, \$240 a month.

Q. Where did you get that figure eight dollars a day?

A. That is from the company any time that a ship does not pay—supply food or lodgings aboard the ship, they pay in lieu of it, eight dollars a day, four dollars for meals and four dollars for room.

Q. Now, how much money have you figured that you have lost due to this injury, in earnings and failure to obtain your board and room?

A. Between \$7800 and \$8000.

Q. Now, Mr. Hawley, you still have the wires in your stomach? A. I have, yes, sir.

Q. Now, how much are you seeking in damages in this cause?

Mr. Holland: Now, if the Court please, on the same ground I mentioned before, I don't think that is a material [61] matter to this lawsuit.

The Court: The objection is sustained, it not be-

(Testimony of Richard T. Hawley.)

ing a material question to the witness apart from any matters in the pre-trial order.

Mr. Holland: Yes.

Q. (By Mr. Kane): Now, Mr. Hawley, what were your earnings in 1953?

A. 1953, I only—I worked an average of six months and twenty-eight days, Alaska Steam, forty-one hundred and some dollars.

Q. When did you first join the Alaska Steam in 1953? A. December 20, 1952.

Q. And you worked—

A. (Interposing) I worked steady for six months on the Nadina, then I got off of her and was ashore for 21 days, and then I shipped on the Square Sinnet.

The only company I worked for in the year 1953 was Alaska Steam.

Mr. Kane: I would like to have the wage voucher marked for identification, your Honor, as Plaintiff's exhibit 3, and the withholding statement for 1953 as plaintiff's exhibit 4.

The Clerk: Plaintiff's exhibits 3 and 4 marked for identification.

(Plaintiff's exhibits 3 and 4 [62] marked for identification.)

Q. (By Mr. Kane): I show you what has been marked for identification as plaintiff's exhibit 3, and ask you to tell the Court what those are?

A. Those are my pay vouchers for each voyage on the Alaska Steam.

Q. And those pay vouchers cover what period?

A. From December until June, December, 1953,

(Testimony of Richard T. Hawley.)

to June—on one ship, and on the last one from July to August.

Q. Now, what do you mean by “the last one”?

A. Well, the one I made out on the Square Sinnet. I only made one voyage on the Square Sinnet.

Q. And that terminated September 2, 1953?

A. That did, yes, sir.

Mr. Kane: All right, I will offer these.

Mr. Holland: No objection, your Honor.

The Court: Plaintiff’s exhibit 3 for identification may be admitted.

(Plaintiff’s exhibit 3 received in evidence.)

Q. (By Mr. Kane): Showing you what has been marked for identification as plaintiff’s exhibit 4, I will ask you to tell the Court what that is.

A. That is my total earnings from Alaska Steam in 1953.

Q. What is the name of that exhibit?

A. That is withholding statement from Alaska Steam for earnings made during the year 1953.

Mr. Kane: No objection? I will offer that.

Mr. Holland: No objection, your Honor.

The Court: Plaintiff’s exhibit 4 for identification may be admitted.

(Plaintiff’s exhibit 4 received in evidence.)

Q. (By Mr. Kane): Now, will you describe to us any feelings you have had from your stomach, Mr. Hawley, and I would like to have you stand up and sort of show the jury just by touching your abdomen where you were struck, and what effects you have had from that, physical effects?

(Testimony of Richard T. Hawley.)

A. Well, I have an operation here, from about eight—seven inches long, and I have two layers of wire that run from up in here down to below there, and I have two layers of wire they put in there to cover up the hernia. When they operated on my stomach, they took a piece about two and one-half inches square out of the lining of my stomach, and I have in here that silver wire they put in for a brace.

Mr. Kane: I have no further questions. [64]

Cross Examination

Q. (By Mr. Holland): Mr. Hawley, in my opening statement to the jury, I compared roughly the hold in which you were working with this courtroom, and told the jury that if this were the hold, that the square up above where the light is would represent reasonably the opening where the hatch is, and I didn't intend it to be correct, as I mentioned, but is that comparison a fair comparison? A. That is a fair comparison, yes, sir.

Q. You talked about the coaming, now, and would that be the side of the small square?

A. That is what you set the hatch covers into.

Q. In other words, if they closed up the small opening across, they would set the covers in the coaming, and the coaming is the part that runs outside? A. Outside the lower part, yes.

Q. I see. And assuming that His Honor represents towards the back of the vessel, then at the

(Testimony of Richard T. Hawley.)

moment where you are in the witness box would be forward? A. That is right.

Q. And you would be in the forward wing?

A. Yes.

Q. And you would be under the coaming?

A. Under the coaming; yes, sir. [65]

Q. And Mr. Kane, your attorney, would be about in the middle of the square?

A. About in the middle of the square, yes.

Q. Now, you told us about this ladder that goes from the deck of the hold up to the edge of the coaming; is that where it goes?

A. It is inside the coaming, about one foot inside the edge of the coaming.

Q. Just back——

A. (Interposing): It is an escape hatch.

Q. It is back from the edge of the coaming a little bit?

A. As the ladder goes up, is it a free standing ladder that would go from the middle of the room up?

A. No, it is connected at the forward deck.

Q. I didn't mean alone, is it standing without anything around, but secured at the bottom and top?

A. Secured at the bottom and top. It is a straight up and down ladder.

Q. If the ladder were in this room, I could walk around it if there was no cargo?

A. If there was no cargo; yes, sir.

Q. Is that ladder in the middle of the ship, as far as [66] going from side to side?

(Testimony of Richard T. Hawley.)

A. Yes, it is in the center of the ship, on the forward side of the hold.

Q. Now, you told us, I believe, that you were standing towards the port side which would be in this direction. Again, that is the back, from the ladder?

A. Yes, sir.

Q. How far?

A. Three feet.

Q. Were you even with the ladder opposite you?

A. I was back against the salmon, even with the ladder, yes.

Q. How close did the salmon come up to the ladder?

A. Within one foot.

Q. Wasn't there any more space than one foot between the salmon and the ladder?

A. Between the salmon, there was no space at all, behind the ladder at all. The salmon was stacked right up flush with the ladder.

Q. Except for one foot, you have told us?

A. One foot in front, yes, in front of the ladder underneath the hatch coaming. They load up until it is within one tier of the center of the hatch in order to go to work and let anybody stand back underneath of the coaming during loading. [67]

Q. And if this rostrum here represents the foot of the ladder, then you are telling us that this whole forward end of the hatch was filled with salmon?

A. To the other square of the hatch.

Q. To the other square of the hatch up to the ladder?

A. That is right.

(Testimony of Richard T. Hawley.)

Q. And if I went to use the ladder, I would stand here?

A. You would have to stand on the forward end.

Q. You always do anyway, don't you? You face forward as you climb the ladder? A. Yes.

Q. Now, were you directly opposite the ladder to the port side?

A. I was even with the ladder on the port side about three feet.

Q. You are certain that there wasn't any room between the ladder and the salmon that was stacked forward of the ladder?

A. There was no room at all.

Q. How many tiers of salmon were forward of the ladder up in this end of the hold?

A. Three tiers, seven high.

Q. Do you remember when you gave the testimony in Mr. Kane's office in January of last year, about the answers, [68] Mr. Hawley, and the questions that you were asked? Do you remember that?

A. Yes.

Q. And Mr. Franklin, who was in my office, came up and asked you questions about it? Do you remember he asked you this question:

"How far forward did the tier of salmon run from where you were standing?"

"You said how far forward?"

"Yes.

"There was only three cases between where I was standing and the deep tank.

"Question: Three tiers?"

(Testimony of Richard T. Hawley.)

“Answer: Three tiers.”

You remember that you told us that that day?

A. That is what it was, three tiers.

Q. And then he asked you:

“What was the space between the end of the tier and where you were standing?”

And you said, “About two cases of salmon.”

And he asked you, “How wide would that be?”

And you said, “About three feet to the edge of the hatch coaming.”

Is that right? A. That is right. [69]

Q. So that where you were standing was about three feet from the nearest tier of salmon?

A. I was standing against the salmon when the load was coming down.

Q. Do you deny that you said it would be around three feet to the tier?

A. To the edge of the hatch.

Q. We are talking now about the tiers up forward. How far from where you were standing to the tiers in the forward end?

A. There wasn't any space there. I was standing up flush against the cases of salmon.

Q. Let me ask you again:

“All right, what was the space between the end of the tier and where you were standing?”

“Answer: Well, about two cases of salmon.

“Question: How wide would that be?”

“Answer: It would be around three feet to the edge of the hatch coaming.”

Do you deny you said that at that time?

(Testimony of Richard T. Hawley.)

A. I do not deny that I said that, but that question there pertains to the load of salmon coming into the hold.

Q. He asked you about how many tiers between. Three tiers, you told him.

A. There was three tiers, and he asked me how much further, according to his way of putting the question at that [70] time, how much further to the center of the hatch where the load was coming down, and I said "About two cases, about three feet."

Q. His question was:

"How many tiers forward?"

And your answer was:

"There was only three cases between where I was standing and the deep tank.

"Question: Three tiers?"

"Answer: There was three tiers, yes.

"Question: All right, what was the space between the end of the tier and where you were standing?"

"Answer: Well, about two cases of salmon".

Do you remember being asked that? A. Yes.

Q. And two cases of salmon is about three feet, you say? A. That is right.

Q. Had you loaded salmon on any previous days?

A. Yes, we worked in two other ports.

Q. Had you done essentially the same type of work at the other ports in the same manner?

A. In the same manner, only in a larger hold.

(Testimony of Richard T. Hawley.)

Mr. Holland: Will you mark this, please? [71]

The Clerk: Defendant's exhibit 1 marked.

The Court: Is that A-1?

The Clerk: Defendant's exhibit A-1 marked.

(Defendant's exhibit A-1 marked for identification.)

Q. (By Mr. Holland): Mr. Hawley, handing you what has been marked Defendant's exhibit A-1, would you tell us what that is a picture of, as far as you can tell?

A. That is a picture of a swing board with a load of oranges on it.

Q. And will you tell us, is the bridle visible?

A. The bridle is visible, but that was not the kind of bridle on the pallet boards loading salmon.

Q. All right; how does this picture compare, if at all, with the set-up you had at that time, realizing, of course, instead of oranges, you were loading salmon cases?

What difference would there be as to the arrangement?

A. There was a different type of pallet board used.

Q. Is it larger, or smaller?

A. I would say it was about the same size pallet board. They run four and one-half or five feet, or six feet, some a little better.

Q. But there is a difference in size. Is that the only difference? [72]

A. There is a difference in the pallet board and the sling because on the pallet boards we were using,

(Testimony of Richard T. Hawley.)

there were four steel hooks, or eyes, on each end of the board where you use the hook to hook in.

Q. I see.

A. That is a regular skid load there.

Q. So that the difference between your board and this picture, which doesn't pretend to represent your situation, would be instead of the boards put under the skid, there were four eyes?

A. There were four eyes where the bridle hooked into the steel eyes on the corners.

Q. Is the same general arrangement there as far as the board itself, and the four legs going down, would they be the same?

A. The same generally, but not on the bottom there because they use a pipe, and they only hook it underneath the sling there. I will show you.

Mr. Kane: Your Honor, I am objecting to this line of questioning on the ground it is not proper cross-examination.

If counsel wants to make Mr. Hawley his witness, I have no objection.

The Court: I don't know if you identified the exhibit sufficient to show any purpose. I will sustain [73] objection on that.

Mr. Holland: I will offer Defendant's exhibit A-1 at this time, merely for illustrative purposes and subject to the changes Mr. Hawley mentioned.

Mr. Kane: I object to it, your Honor, on the ground—

The Court (Interposing): Objection sustained.

Mr. Kane: (Continuing) —it is not a replica.

(Testimony of Richard T. Hawley.)

The Court: I will sustain the objection.

Q. (By Mr. Holland): Do you yourself have any pictures of the proper type of board, Mr. Hawley, and the salmon cases?

A. Yes, I have.

Q. You have some pictures?

A. No, I haven't.

Q. In the exhibit, Plaintiff's exhibit No. 1, you have shown the two lines coming down from above the deck, down to the load? A. Yes.

Q. Actually, at that point, there is a four-legged bridle?

A. Four-legged bridle under the load.

Q. I see.

A. The two lines coming down are into a big hook. They have a bridle with four hooks on it, leading from the large hook, and each one grips a hook, and you hook it into [74] the eyes on the board in order to raise the salmon, and when we come down, we take the hooks out of the eyes, and hold them until the winch driver swings them out of the way and nobody can get hit, and picks up another board.

Q. The two lines come together at a big metal circle, and then four separate lines go down to the board? A. Yes.

Q. And that is called a "bridle"?

A. That is called a bridle with four hooks on the bottom of each line.

Q. Do you know the identity of the three men

(Testimony of Richard T. Hawley.)

whom you described as cannery workers who were working with you?

A. No, I do not. At the time, we didn't do much——

Mr. Holland: If the Court please, I think the witness said "no", which was all that was called for.

A. (Continuing): No.

Q. (By Mr. Holland): Do you know where those men are today, Mr. Hawley?

A. I do not.

Q. And do you know for what cannery they were working at that time?

A. At that cannery there at Uganik.

Q. Uganik?

A. Uganik. It is an Indian name. Something like that.

Q. Is that the name of the cannery where they were [75] working?

A. That is the name of the cannery where we were loading, and they were working at the time.

Q. And that cannery is not operated by Alaska Steam that you know of?

A. I don't know that it is.

Q. When you were working down in this area, according to your Firemen's Union contract, you told us you received extra pay, is that true?

A. Yes, on overtime.

Q. Is that work that you must do, or is that work available to you under your contract?

A. It is available under the contract, and there is an agreement between the Firemen's Union and

(Testimony of Richard T. Hawley.)

Alaska Steam. They have a special agreement with Alaska Steam, and the Coastwise Lines.

The Alaska ships have different agreements than our off-shore agreements.

Q. Is that work you have to do if you don't want to?

A. It is not exactly compulsory, but any time you are a day worker aboard one of those ships, and do not assist, they will always find a reason why you don't work no more.

Q. But, in any event, it is not compulsory?

A. It is not compulsory at any time to work for anybody, as far as I know.

Q. At any time you were down there and you perhaps thought that any of the men working with you were not too experienced, you had a right, since it was not compulsory, to stop working?

A. You could stop any time you wanted to, but——

Q. (Interposing): That is all right.

Mr. Holland: May the witness be instructed to answer "yes" or "no"?

The Court: He may want to explain.

Mr. Holland: He wants to explain every question.

The Court: The question was answered now, but I suggest to the witness, if you wish to explain——

Q. (By Mr. Holland) (Continuing): Do you want to explain that answer, then?

A. You see——

(Testimony of Richard T. Hawley.)

The Court: (Interposing): You wish to make a further explanation?

The Witness: Yes, on that there.

A. (Continuing): Any day workers, or working in the engineroom, the first engineer turns them over to the mate to work cargo. According to the Firemen's agreement, we agreed to cover up any time there was no regular longshoremen available, that the Firemen's [77] Union assist the Sailors in helping to unload salmon. That is why the Alaska Steam has that contract, because a lot of canneries up there, they have not—they have no longshoremen at all, and a lot of times while up there, those canneries are going and they cannot get the cannery workers to help them. They have to rely on the black gang. If you go to work and load one of those Alaska ships steady for six months, and refuse to work cargo, you will be discharged and you will not be able to work for them very long.

Q. (By Mr. Holland): Did you make any complaints to anybody about the other men working with you prior to your accident?

A. I hadn't worked with them long enough.

Q. You worked one and one-half hours only?

A. I worked one and one-half hours only.

Q. How many loads did you handle in that period of time, would you say?

A. I would say about 25 loads.

Q. What were you doing right at the time you were struck? Were you standing idle waiting, or were you doing some work?

(Testimony of Richard T. Hawley.)

A. The slingload of salmon had already entered the hold, and was down within two or three feet of the deck where we were working and it was in a swinging motion, and I [78] reached out and grabbed ahold of the corner of the bridle I was supposed to get.

Q. You got ahold of the bridle?

A. I had ahold of the bridle at the time they swung the load.

Q. At the time they swung the load, it was standing in a fore and aft position, is that correct?

A. It was swinging all the way down in athwartship and I walked out and grabbed the bridle on the forward inboard side.

Q. Before it was turned, was it fore and aft, or across the ship?

A. Athwartship.

Mr. Kane: I suggest he has already answered.

The Court: He goes on. If he would confine his answers directly, it would simplify it.

A. (Continuing): 'thwartship.

Q. (By Mr. Holland): You said it was across the ship? A. Across the ship.

Q. Before the men started to turn it?

A. Yes, sir.

Q. And before they started to turn it, you got your hands on one of the corners; right?

A. Right. [79]

Q. And it then swung and hit you in the stomach at that time?

A. At that time, yes, sir.

(Testimony of Richard T. Hawley.)

Q. You knew from the fact your hands were on it that it was going towards you, didn't you?

A. Yes, sir.

Q. How quickly did it swing?

A. It was swinging quite fast, and the other men were all on the other side, pushing against it, and I couldn't get out of the way at all.

Q. How many pounds of cargo were aboard?

A. I would say around generally 34 to 40 cases of salmon, which runs about sixteen or seventeen hundred pounds, at least.

Q. Now, your body wasn't pinned between the board and the salmon, was it?

A. It was, after I got hit. They pushed me back in to the cases of salmon in the back.

Q. You are telling us where it pushed you. Were you pinned between the edge of that board and the salmon behind your back?

A. I was, after I got hit.

Q. Were you knocked against the salmon?

A. I was knocked against the salmon, and I grabbed ahold of the ladder to keep from falling.

Q. Were you pinned between the board and the salmon? Do you understand my question?

A. I understand.

Q. Were you pinned between the two?

A. I wasn't pinned; when it hit me, I let go of the bridle and grabbed the ladder.

Q. Then your answer is that you were knocked in? A. I was knocked in.

Q. What kind of a blow was it?

(Testimony of Richard T. Hawley.)

A. A real sharp blow.

Q. Would you call it a pushing blow?

A. No, more like a sharp push, or punch.

Q. Mr. Hawley, when you gave your testimony in Mr. Kane's office, last January, the question you were asked was, "What part of your body was pinned?" And your answer was, "It didn't pin me. Just hit below the belt, a sort of glancing blow, sort of a pushing blow. It knocked me against the cases of salmon."

Now, you say it was not a pushing blow?

Mr. Kane: Your Honor, he testified it was a pushing blow.

The Court: The question is whether he testified "yes" or "no"?

A. Yes, sir. [81]

Q. (By Mr. Holland): The answer is "yes", you did so testify? A. Yes.

Q. All right; as between the testimony a year ago, at which time you said a pushing blow, and your testimony today in which you say it was not a pushing blow, would you tell us which is the truth?

A. It was just like I said, it was a sharp, pushing blow.

Q. It was a pushing blow then?

A. A sharp, pushing blow.

Q. And you described it a year ago as a pushing blow? A. Yes.

Q. Can you describe how fast that 16 or 17 hundred pounds of cargo was swinging?

(Testimony of Richard T. Hawley.)

A. I couldn't estimate the speed. It was swinging pretty fast, because there were four men on the other side against me.

Q. How far back did it knock you back when it pushed you?

A. About one and one-half feet back.

Q. Where were you struck with reference to the navel? A. Just below the navel.

Q. About how far below? [82]

A. About two inches.

Q. You were standing still at that time when you were hit opposite the ladder, were you?

A. Inside the ladder.

Q. Inside, meaning what?

A. To the port side.

Q. But even with it, across the ship, is what you mean? A. Yes.

Q. And that is where you were standing when you were pushed or knocked back?

A. When I was knocked back against the cases of salmon, I reached out and grabbed the ladder to keep from falling.

Q. And if you were standing even with the ladder, what space was there in which you could be knocked back one foot, since you told us the salmon was stacked up to the ladder?

A. That is the only space you could have been knocked back in.

Q. Was the salmon stacked up to the back side of the ladder?

(Testimony of Richard T. Hawley.)

A. The salmon was stacked clean across the hold.

Q. Clean across the hold? A. Right. [83]

Q. And you were standing abreast of the ladder, opposite the ladder, is that right?

You told us that once; is that right?

A. Right.

Q. And you still say there was space for you to be knocked one and one-half feet back against the salmon? A. Up forward, I mean.

Q. Forward on the ship?

A. Forward to the ship.

Q. Was the load of salmon even or across the front of the ship, or even to the square of the hatch?

A. We filled in the forward side of the hold to the wall on each or both sides, and we were working in the wings and the forward corner at that time.

That is where we were swinging them, in past the cases of salmon we already loaded in order to get up in the forward corner of the hatch.

Q. All right, now I will ask you my question again:

Did the salmon as it was stowed present a straight wall across?

A. A straight wall across the square of the hatch, yes.

Q. And you still say you were knocked back some one and one-half feet when you were hit?

A. Yes, sir.

(Testimony of Richard T. Hawley.)

Q. Now, isn't it true that you were pushed by the [84] load just as it began to move?

That is, just as the board began to turn around?

A. The board was swinging as we grabbed ahold of it, and they pushed it.

Q. Is it true that you just began to turn the board when you got hit? A. Yes, sir.

Q. So that it was in the start of this quarter-turn that the men were trying to make?

A. Yes, sir.

Q. Therefore, the swing, or this quarter turn of the swing of the board had not been completed when you were hit, then, is that right?

A. Yes, sir.

Q. Did you know at the time why the direction of the swing was any different than you had been doing before?

A. I did not, not until after I was hit.

Q. Did you at any time after you were hit, find out why it was any different?

A. I did, right after the load was landed, and I talked to Mr. Perry about it and told him in the near future we would go ahead and watch and swing the loads clockwise.

Q. You are telling me what you told somebody. Did you ever find out why they turned it differently?

A. They didn't say. I told them to watch it in [85] the future.

Q. Is the answer to my question "yes" or "no"?

(Testimony of Richard T. Hawley.)

Did you ever find out why they turned it in a different direction? A. No, I did not.

Q. And is it true that you blame your accident on the three cannerymen who came from the shore?

Mr. Kane: I object to that, your Honor, on the ground the answer calls for a conclusion.

The Court: The question is: "Is it true?"

The question should be, do you blame them?

Mr. Holland: I will reframe the question.

Q. (By Mr. Holland): (Continuing) You blame your accident on the three cannery workers who were from the shore and who you say were inexperienced?

A. At the time, I didn't blame anybody for it.

Q. Now, we are in a lawsuit, and are those the three men you blame for it?

A. I would say their inexperience. That might have been some help to sustaining the injury I got.

Q. Then is your answer to the question "Yes"?

A. Yes.

Q. One thing, Mr. Hawley, on Plaintiff's Exhibit No. 1, I believe you attempted—but perhaps you were stopped, [86] even by me, to put in some further change that you observed on this diagram, because it didn't show the coaming? A. Yes.

Q. Is that right?

A. The square of the coaming.

Q. In other words, this deck should come out further? A. Yes.

Q. How far?

A. Even with the top one there.

(Testimony of Richard T. Hawley.)

Q. Even with the top one? A. Yes.

Mr. Holland: Should I draw that, Counsel?

Mr. Kane: Yes.

Q. (By Mr. Holland): A straight line, Mr. Hawley?

A. That would be the hatch coaming.

Q. How, like that?

A. Yes, and then down.

Q. And the same on the other?

A. Yes, and then down.

That is where your hatch coaming is.

Q. That is the point you get in underneath?

A. Yes, sir; underneath.

Q. Since you say you were pushed, or struck by the board at the very beginning of its swing, and since you had [87] your hands on it, tell us how quickly after it started to swing that you knew in what direction it was swinging?

A. I didn't know until it hit me.

Q. You couldn't feel it in your hands, that it was coming towards you?

A. On those cables there, there is quite a bit of slack, and sometimes when you grab ahold, and it is swinging, there is always a little give there.

Q. And there is slack in the cable even though it is 170 pounds?

A. I don't mean slack, but there is give there when you are pushing it around.

Q. How many inches would you estimate that the corner of the board had travelled from its first position until it hit you?

(Testimony of Richard T. Hawley.)

A. About ten inches.

Q. And during that period, there was so much slack or give——

A. (Interposing) When it hit me, it pushed me off balance.

Q. Now, I will ask you my question:

So, you tell us that there was so much slack or give in that cable that you couldn't feel it move towards you until the board itself travelled ten inches; is that what you are saying? [88]

A. That is my estimate.

Q. Is there any slack in the other three legs of the bridle holding the 1700 pounds?

A. I don't know what was on the other corners. I only had ahold of one corner.

Q. You think that a board supported by four cables could have ten inches slack?

A. I didn't say ten inches slack. I said it travelled ten inches before it hit me, but there wasn't that much slack.

Q. You are sure you had your hands on the cable?

A. I am sure I had my hands on the cable, yes, sir.

The Court: I think we might take a recess now, Mr. Holland.

Mr. Holland: Thank you, your Honor.

The Court: Ladies and Gentlemen of the Jury: We will now take the mid-afternoon recess. The Court calls your attention to the admonition given

(Testimony of Richard T. Hawley.)

you this morning, and asks that you heed it on this occasion.

You may now be excused.

(Whereupon, the jury retired from the court room.)

The Court: Court will recess for fifteen minutes.

(Whereupon, at 3:17 o'clock p.m. a recess was had in the within-entitled and numbered cause until 3:34 [89] o'clock p.m. January 7, 1955, at which time the following proceedings were had, to-wit:)

The Court: You may take the stand, if you wish, Mr. Hawley. You may call the jury.

We will recess about 4:30.

(Whereupon, the jury was returned to the courtroom.)

Mr. Holland: That is agreeable, your Honor.

The Court: You may be seated. You may proceed, Mr. Holland.

Mr. Holland: Yes, sir.

Q. (By Mr. Holland): Mr. Hawley, you told us that if you would wait back under the coaming for the cargo to come down, you would wait there until it got just off the deck and then step out to take ahold of it? A. Yes, sir.

Q. How far on this occasion did you step out to take ahold of it? A. About two feet.

Q. And when you stepped out—before you took those two steps, or that two-foot step—two-foot step—were you just opposite the ladder and then you stepped out into the square?

(Testimony of Richard T. Hawley.)

A. I was three feet inside the ladder, even with the ladder. [90]

Q. Even with the ladder going across the ship?

A. Yes.

Q. Was that before you stepped, or after?

A. Before I stepped out.

Q. And you stepped into this room into the square?

A. I stepped into the square to grab ahold of the bridle.

Q. About two feet? A. Right.

Q. This manhole that you described, would be just a hole in the ceiling that you would go through when you climb the ladder? A. Yes.

Q. And you told us it would be back from the edge of the coaming; how far?

A. About one foot or so to the after end of the hold.

Q. Yes, and the hole would be just big enough for a man?

A. Just big enough for a man to go through, yes.

Q. And the ladder itself would be one and one-half feet or more back from the coaming, in underneath the coaming?

A. About two feet, or better; about another foot or so.

Q. And when the cargo came down, then the lines that held it, on Plaintiff's Exhibit 1, were they right against [91] the coaming or a little aft of it?

A. A little aft of the coaming.

Q. How far?

(Testimony of Richard T. Hawley.)

A. The lines would be to the center of the board about, I would say, three feet.

Q. From the coaming?

A. Yes, but the board would have to pass within one foot of the coaming.

Q. I see, so that when you stepped out there from about two feet, from the position you were in just opposite the ladder, at that time when you put your hands on the cargo, you had about three and one-half feet between yourself and the salmon stowed in the forward end, didn't you?

A. About three feet, yes.

Q. You told us about one and one-half feet from—

A. (Interposing) And then one and one-half feet on the inside, because the bridle comes down in the center of the board.

Q. So that you had three feet between your back and the salmon? A. Right.

Q. And the board only moved ten inches before it hit you? A. Right.

Q. Why didn't you move back into that three-foot [92] space?

A. I couldn't let go, because I was off balance when the board hit me.

Q. How were you off balance?

A. When the board hit me, it knocked me off balance.

Q. You just said when the board hit you, it knocked you off balance? A. Yes.

(Testimony of Richard T. Hawley.)

Q. Before it hit you, why didn't you step back into that three-foot space?

A. There wasn't three feet, because when the corner started swinging, I got ahold of the bridle.

Q. When you stepped out to grab the bridle, you stepped about two feet, and then what did you do before you were hit?

A. I grabbed ahold of the bridle, and the load was swinging, and I got ahold to catch the swing on the load.

Q. Did you grab the bridle?

A. Yes, and then I stepped back with the——

Q. (Interposing) From the time you grabbed the bridle, until you were hit, you told us the corner of the load moved about ten inches before it hit you.

A. What?

Q. You told us the corner of the load moved about ten inches before it hit you. [93]

A. When it was pushed, yes, but the board was still swinging when we grabbed ahold of the bridle, when we grabbed ahold of the bridle on account of Perry was working on the after end, and it was only a little space from the drop-off; we would let the load swing with us and then step back with the bridle until we got the swing out of the load, and then turned it the way we wanted it to turn.

Q. Then back to my question, Mr. Hawley:

You told us when you stepped out to grab the load, you stepped out about two feet.

A. To grab the bridle.

Q. And before you stepped out, there was about

(Testimony of Richard T. Hawley.)

one and one-half feet between you and the salmon, is that correct? You told us that.

A. No, I was back against the salmon in order to go to work and step out that two feet.

In stepping out, I stand back against the cases of salmon, and underneath the hatch coaming in order to go to work and be in the clear.

Q. Were you opposite the ladder when you were hit, or were you after of the ladder out into the square?

A. When I reached out, I had to reach out from the ladder.

Q. About two feet? A. About two feet.

Q. And then, immediately after that, you put your [94] hands on the load, and it moved ten inches, and hit you in the stomach—

A. (Interposing) I grabbed—

Q. (Continuing) —is that correct, what I said? A. Yes.

Q. That is my question. A. Yes.

Q. Then, at the time you were hit in the stomach, there was about three feet behind your back, is that correct?

A. No. As I told you, in order to catch the swing of the load while the load is swinging, coming down, we grab the bridle and ride the bridle around, and step back a step or two, and kind of steady the load before we turn it.

Q. Did you step back a step or two this time?

A. I did, and while this load was—before it was wholly stopped, and then we steady it, the load,

(Testimony of Richard T. Hawley.)

and then we swing it clockwise, the way we want, and then we get the board even so that we can swing it underneath.

Q. After the load came down and was steady, before it was turned, how much distance between the load and the cases of salmon was there forward? A. I didn't get that.

Q. How much distance between the load before you swing it, and the salmon that was stowed up forward; how much [95] distance?

A. Between the load and up forward?

Q. Yes.

A. I would say about four or five feet.

Q. Between the load and the salmon up forward, is that right? Is that what you mean?

A. You mean—now, which way do you mean, the cases of salmon were behind me.

Q. That is correct.

A. No, there was only three feet.

Q. Three feet then between the load and the salmon behind you? A. That is right.

Q. Now, I want you to remember that, because I don't want to confuse you, nor do I want to be confused.

You say it was three feet between that load before it was swung, and the salmon stowed up behind your back?

Mr. Kane: I object to this line of questioning, Your Honor. It is in the nature of argument with the witness.

(Testimony of Richard T. Hawley.)

The Court: It is cross examination. You may proceed.

Mr. Kane: I don't think it has any relevancy.

The Court: I think it is quite relevant. You may [96] proceed.

Q. (By Mr. Holland): To rephrase my question:—well, I will go on.

You have now told us before the load was swung that there was three feet between the load and the salmon that was at your back?

A. At my back, yes.

Q. You told us awhile ago that the corner of the load moved ten inches before it hit you?

A. Yes.

Q. Why didn't you back up to the balance of two feet, ten inches, behind you before you were struck?

A. As I explained before, I stepped out to get this load which was three feet from the nearest case of salmon. With the swinging of the board, I had to take a step or two back to take the swing out of the load.

We had to take the swing out of the load as it was coming down, in order to give protection to the man on the after end, so that he wouldn't be knocked off into the hole, and when I stepped back a foot or two, we were getting the swing out of the load when they pushed in a counter-clockwise direction instead of clockwise.

Q. Then, as you were hit, you were stepping backwards at the time?

(Testimony of Richard T. Hawley.)

A. Stepping backwards at the time. [97]

Q. Why didn't you step back further?

A. I couldn't step back no further after the board hit me. It knocked me back.

Q. Why didn't you step back further before it hit you?

A. I would have got the full load right in my whole stomach.

Q. Why didn't you step back into the space alongside this case of salmon?

A. I would have got hit anyway, because I couldn't move left or right.

Q. It didn't pin you against the salmon?

A. It knocked me against it.

Q. It didn't pin you against the salmon?

A. But if I did, it would have pinned me, and maybe killed me.

Q. Did you let go of the bridle when you were hit?

A. I didn't let go until after I was hit, and then grabbed the ladder; but if I had let go of the bridle——

Q. (Interposing) I am not asking you that.

The Court: Just a moment. Let him finish.

Mr. Holland: All right.

A. (Continuing) If I stepped back, the whole load would have hit me and maybe killed me at that time. [98]

Q. (By Mr. Holland): Did the load ever hit the salmon?

A. No, it did not.

Q. In computing the amount you say you have

(Testimony of Richard T. Hawley.)

lost in wages and board and room, have you figured in this eight dollar a day figure that you told us men are paid when they are ashore; did you figure that in for the ten months?

A. For the ten months, yes, sir.

Q. You figured that in. Did they ever pay you eight dollars a day during that ten months?

A. I was paid by Alaska Steam according to the maintenance and cure of the agreement between the shipowners, is what I was paid, \$1,008 by Alaska Steam for just the time that I was unfit for work, and an out-patient.

Q. But you included that figure?

A. I did.

I was coming to that, and I collected \$1,008.

Q. But still since you included it, is it your contention you should be paid twice?

A. No, I included it in with the stipulation that I have already been paid that. That will be taken out.

Q. All right; now, Mr. Hawley, your counsel asked you how much you lost that you figured as a result of this ten months disability, and you told us \$7,800 to \$8,000?

A. Right.

Q. And now you tell us that includes maintenance [99] which you have already been paid.

A. I have collected \$1,008.

Q. And from that figure, we should take——

A. (Interposing) \$1,008 off of that figure.

Q. All right; now, did you include in that figure

(Testimony of Richard T. Hawley.)

you gave us, the value of board and room while you were in the hospital?

A. That is included, yes, because I have to keep my room while I am ashore. I always keep my room when I come ashore, anyway.

Q. But in the hospital, you got free board and room? A. I still kept my room.

Q. In the hospital, you still kept—I mean, you got free board and room?

A. I got board and room in the hospital.

Q. And you received your full wages at the end of this voyage you were on, didn't you, even though you did no more work?

A. I did no more work, and was paid to September 2nd.

Q. Have you ever had any experience in handling cargo before? A. I have.

Q. When?

A. Over a period of twenty-five years.

Q. Have you ever handled cargo in the Alaska trade? [100] A. I have.

Q. How recently, other than this one time?

A. One year ago, one year before I was hurt.

Q. During this time you worked for Alaska Steam?

A. No, I did not. I worked for the Coastwise Line.

Q. Did you handle cargo on that occasion?

A. I handled cargo on that occasion, yes.

Q. Do you consider yourself an experienced cargo handler, or stevedore?

(Testimony of Richard T. Hawley.)

A. No, I don't.

Q. You do not? A. I do not.

Q. Do you feel then that you are capable of telling us whether or not somebody else is experienced and capable?

A. No, I wouldn't say for sure whether somebody is capable or not.

Q. Then, what do you—then, what you told us about the three cannery workers you didn't mean?

A. Oh, yes; I do. They were inexperienced and when they should have been on the load, they got on the wrong side of the load.

Q. Now, you told me less than a minute ago that you didn't think you were able to tell us whether somebody else was experienced or not.

The Court: This examination is becoming argumentative, [101] Counsel. I suggest you be cautious about that.

Do you wish to restate the question?

Mr. Holland: No.

Q. (By Mr. Holland): (Continuing) What did you tell us that you were on the Shooting Star, which was your last vessel?

A. Shooting Star, yes.

Q. What were you on that?

A. I made one trip as a wiper, and one trip as an oiler.

Q. And do you have your pay voucher from that vessel? A. I have.

Q. Do you have it with you?

A. I have, I think.

(Testimony of Richard T. Hawley.)

Q. May I see them?

Mr. Holland: Do you have any objection, Counsel, to having these placed in evidence?

Mr. Kane: No.

Mr. Holland: You stipulate then they are then the wage vouchers from the Shooting Star?

Mr. Kane: Yes.

Mr. Holland: Defendants' Exhibit 5.

The Clerk: Defendants' Exhibit A-3 marked for identification. [102]

(Defendant's Exhibit A-3 marked for identification.)

The Court: A-3 may be admitted.

Those are the vouchers from the Shooting Star?

(Defendant's Exhibit A-3 received in evidence.)

Mr. Holland: That is correct.

Q. (By Mr. Holland): (Continuing) Do you have your ticket into the hall for another job, Mr. Hawley? A. I beg pardon?

Q. Do you have your ticket in to the hall for another job? A. I have.

Q. When did you put that ticket in?

A. As soon as I got off the Shooting Star, I registered.

Q. Has that ticket been called since you came back? A. No, it has not.

I am No. 1 on the list now until February 5th; they have 90-day shipping cards now. I am No. 1 man on the list.

(Testimony of Richard T. Hawley.)

Q. Tell the jury what a 90-day card means in terms of getting a job?

A. In the Union Hall, we have what we call a competing system, and a man comes in off the ship; he goes into the [103] hall and registers and gets a card with the number on it, and the date that he registered, and that is good for 90 days, but you have to attend every union meeting, every first and third Thursdays, every month, in order to get your card stamped. You may be able to go out and at any time before the 90 days, you are liable to go out in five or six days. A job is put on the board in our hall, and it is open competition. When a job is called out on the hour, every man that wants that job, he puts his card in at the window and the man with the lowest number gets the job, regardless.

It is fair and above board, and nobody—and, if you don't want the first, or you haven't the papers to cover the job, that is on the board, then you do not throw your shipping card in; but, that shipping card, we had 30-day cards until shipping slowed down quite a bit, and we have 90-day cards now.

Now, then, a job comes up, and I want to go on a ship and go offshore, if I don't want to go in on a job I will hold back and maybe someone with a card behind me can throw in and get the job, but they called out on the hour, and every job that comes in is put on the board, and everybody can see it, and whoever wants it, they call it three times, and the man with the lowest number takes the job.

(Testimony of Richard T. Hawley.)

Q. What happened, Mr. Hawley, later that day when you dropped a case of salmon; how did that happen?

A. I got weak, all of a sudden, and when I lifted the salmon, it slipped right out of my hands. I couldn't hold onto it.

Q. Did it stagger you at all?

A. No, it just dropped out of my hands, and that is when I reported to Perry that my stomach felt funny, and we were putting these cases of salmon seven high.

Q. Is the weight on the bridle, which is the four wires which go down to the board, is the weight evenly divided when there is a load on the bridle? A. It is.

Mr. Holland: No further questions.

Redirect Examination

Q. (By Mr. Kane): Now, on cross examination, Mr. Hawley, you were asked the question:

Do you blame the three men for your injury, these three cannery workers working there?

Will you explain that answer to us?

A. Not fully. I wouldn't blame it all to them, but in the short space of the work, the area we were working in, and all, one of those men should have been [105] on the same side of the board as I am, on the outboard bridle, and he neglected to go and take a chance on the other side that Perry was working.

There wasn't very much room to work in, and if

(Testimony of Richard T. Hawley.)

that board had of swung out, it might have knocked him in, and, as a safety precaution, we ask each man to grab a corner.

Q. Now, Mr. Hawley, how much education have you had? A. Sixth grade.

Mr. Kane: I have no further questions, Your Honor.

Mr. Holland: No further questions, Your Honor.

The Court: That is all, Mr. Hawley.

(Witness excused.)

Mr. Kane: At this time, I would like to offer in evidence, Your Honor, the reading of the deposition of Clarence H. Meyers.

The Court: Are you going to read it in? Do you wish to read the questions and answers with Mr. Holland, and take the stand, or what?

Mr. Kane: Do you want to go up? We can read them back and forth, and we won't have to change.

The Court: Is that agreeable with you, Mr. Holland?

Mr. Holland: Yes, Your Honor.

The Court: I will advise the jury that counsel, Mr. [106] Kane, counsel for the plaintiff, is now introducing the testimony of one Clarence H. Meyers.

Mr. Meyers is not present, and, therefore, this deposition, which was taken some time ago, is being put into the record.

A deposition goes into the record just in the same manner as the testimony of a witness who might be present to testify, and you are to give it the

same consideration as if the testimony were brought out by the witness in the courtroom.

You may proceed. [107]

DEPOSITION OF CLARENCE H. MEYERS

(Whereupon, the following deposition of Clarence H. Meyers was read, the questions being read by Mr. Kane and the answers by Mr. Holland:)

“Q. Would you state your full name, please?

“A. Clarence Henry Meyers.

“Q. What is your address?

“A. 7024 - 15th Northeast.

“Q. What is your occupation?

“A. Sailor.

“Q. What type papers do you have?

“A. AB.

“Q. Approximately how long have you been sailing?
“A. I started in 1917.

“Q. Have you sailed more or less continuously since then?

“A. Well, my last time sailing was since 1942. I have been sailing almost steady since then. Of course, you know what I mean by steady, off and on. You will be ashore three or four months at a time or five months sometimes.

“Q. Are you planning on catching a ship in the near future?
“A. Yes.

“Q. And you don't know whether or not you will be here when this case comes to trial?

(Deposition of Clarence H. Meyers.)

“A. No, I don’t know that. I am liable to go any time. [108] I could leave today.

“Q. Would you tell us whether or not you were aboard the Square Sinnet during the last year?

“A. Yes.

“Q. When was that?

“A. Well, I made two trips on her. I think I got on there in July.

“Q. When did you finally get off that ship, approximately?

“A. Well, approximately two months later. They tied her up. I took her to Lake Washington.

“Q. Could you tell us whether or not you were aboard the Square Sinnet on August 21, 1951?

“A. I was.

“Q. What did you do aboard the ship on that particular day?

“A. Well, we was loading salmon.

“Q. About what time that day did you start loading salmon?

“A. Well, I think we had worked all night and we went to eat because I am pretty sure we got off at noon, so we ate breakfast and come back to work. We are off an hour, you see.

“Q. That would get you back about what time?

“A. 7:00 in the morning. I think we had breakfast at 6:00 and came back at 7:00. [109]

“Q. Where were you loading the salmon at that time in the morning?

“A. The forward lower hold.

“Q. That would be what number?

(Deposition of Clarence H. Meyers.)

“A. Hatch No. 1.

“Q. How many men were working in that hold at the time? “A. Ten.

“Q. Were they divided into any type of groups?

“A. Yes, five on each side, port and starboard.

“Q. What were the duties of these men?

“A. To unload salmon stowed in the ship and unload it off the pallet boards.

“Q. Now, would you describe for us the approximate size of this pallet board?

“A. Well, I would say she was approximately six feet by five. I don't really know the size of the pallet board. It was pretty fair size, around 5½ or five feet or six.

“Q. Would you describe the pallet board when it is completely loaded?

“A. Well, I think you have about 34 cases on there. There is 30 then you seal them on top with four, I think. I think it is 34 cases.

“Q. Approximately how much do each of these cases weigh? “A. 50 pounds. [110]

“Q. Would you describe just the manner in which the pallet board loaded with salmon is lowered down and unloaded in the hold?

“A. Well, it is on your winch and it is taken over the square of the hatch and lowered down into the center of the hatch and when it gets down to where you want it why you push it into place so you don't have to carry the cases of salmon to stow them—as close as you can. You see, they was stowing at that time in the wings.

(Deposition of Clarence H. Meyers.)

“Q. Would you tell us whether or not anything unusual occurred that particular morning?”

“A. Well, we had this accident.

“Mr. Franklin: I move the answer be stricken as not responsive.”

Mr. Holland: I will waive that. I read the answer. Line 25.

Mr. Kane: Yes.

“Q. Yes, would you tell us whether or not anything unusual happened, yes or no, first of all.

“A. Yes, something unusual happened.

“Q. What was that?”

“A. Well, Hawley got hurt. He got struck with the corner of the pallet board.

“Q. Would you tell us how far along with the loading you were at the time Mr. Hawley was hurt?”

“A. How far? [111]

“Q. Yes, how far had you progressed with the loading?”

“A. Well we were in the lower hold. We had stowed forward of the escape ladder to go up and down or to come down on to work and we were stowing in the wings.

“Q. In which wing were you stowing?”

“A. Starboard.

“Q. Do you know in which wing Mr. Hawley was stowing?”

“A. He was on the port side. He was in the other group.

“Q. Now, would you describe for us what you saw at the time Mr. Hawley was hurt?”

(Deposition of Clarence H. Meyers.)

“A. Well, the load came down. She came down in a sort of swinging manner and the fellows stepped out to steady her and turn her into position and Hawley was over by the ladder and got hit with the corner of it.

“Q. Where were you standing at this time?

“A. Well, I was over on the port side out of the way.

“Q. Did you have a clear and unobstructed view of what was going on over on the port side?

“A. Well, yes, there is nothing there but the load and the men.”

Mr. Holland: Well, I will waive the objection, your Honor.

“Hawley was up against the salmon and—the forward part beside the ladder and it looked like several of them had ahold of it. Of course, with something like that happening I am not—I am only particular to take care of [112] myself. The load was swinging and they grabbed ahold of it.

“Q. Would you tell us how the various men on the port side handled this particular load?

“A. Well, they come out trying to get ahold of it and they did get ahold of it.

“Q. Will you tell us where on the load the men were?

“A. Well, they get ahold any way to push it into position. You see, they could be on your lines coming down on your pallet board, if you grab it that way to pull it—either way, and the corner

(Deposition of Clarence H. Meyers.)

when it swung in—when it swung in the corner hit Hawley.

“Q. How many men had ahold of this pallet board at this particular time?

“A. Well, you see, I couldn’t see all of them. I could probably see three.

“Q. And where were they?

“A. Well, there was two out here in the open and Hawley on the inside.

“Q. Now, what were the two men out in the open doing?

“A. Well, I would say they was pulling—or pushing. Well, they could have been pushing or pulling to steady because this thing was swinging and they will pull—you know, that will pull you because that is 1,500 or 1,600 pounds and what you are trying to do is steady it and turn it around and push it into position. [113]

“Q. Then what were these men doing at that time?

“A. Well, now, I couldn’t possibly say whether they were pushing or pulling, but they were trying to place the board, get it steady and push it over, and then they holler to drop it, you know, get it in as far as you can so the men wouldn’t have to carry the salmon too far. You see, that is the idea of getting the board in there.

“Q. Can you describe for us the manner in which the load came down into the hold in relation to which way it was facing when it came down;

(Deposition of Clarence H. Meyers.)

in other words, did it come down fore and aft or athwartship or how?

“A. Well, I would say it was going athwartship, but it was like that, you see (indicating), and swinging back and forth like this, but I would say that the load had turned some way and I am not really positive of that. The only thing I can really say is that the corner hit him.

“Q. Will you tell us what happened after the corner hit Mr. Hawley?

“A. Well, when the load swung out I hollered to him, ‘Are you hurt?’ and he said, ‘No.’ Well, then I paid no more attention to it because when the load swung out I thought he was going to drop.

“Q. Did you at any time have an opportunity to observe Mr. Hawley’s physical condition then or immediately after? Just answer yes or no. [114]

“A. Well, I got off watch I guess it was around noon. I don’t know. I never did pay him any attention, never paid any more attention to it at that time because when I asked him I said, ‘Are you hurt?’ and I run over there and he said, ‘No,’ and, of course, he was rubbing his stomach sort of and he said, ‘No’ and that is the last thing I thought of that until a day or so later.

“Q. Would you tell us when, if ever, you first saw any effects, anything unusual on Mr. Hawley’s body after the accident?

“A. Well, I heard that evening that he went to bed and then I figured he might have got hurt a little bit at that, but I never gave it much thought

(Deposition of Clarence H. Meyers.)

until, oh, I guess it was—we left port and I come into the mess hall and this was early in the morning, and I think I was on the 12:00 to 4:00 watch, anyway. I am going to the wheel and I don't know what wheel watch I had, second or third. I know I didn't have the first, and I come into the mess hall to get coffee and he was getting there and I says to him, 'How do you feel?' and he lifted up—he just had a T-shirt on and he showed me his belly button and it was all full of blood.

“Q. When was this?”

“A. Well, that could have been a day or two later. I don't really know. I know we was out to sea because I was going up to stand a wheel watch and it was after midnight. [115] I didn't have the first watch, and I presume I came back from lookout and from lookout I would go to the wheel and I came into the mess hall and he was sitting there.

“Q. Could you describe for us now just where Mr. Hawley was standing at the time he was struck?”

“A. Well, he was just by the ladder and he was like that (indicating). This is the forward part of the ship and the ladder comes down here, you see, and he is over on this side of the ladder (indicating).

“Q. Which is port and starboard?”

Mr. Holland: That is objected to as not responsive, except for the first two sentences.

The Court: Well, it would appear that the first sentence is, and the second; and the balance would seem to be unresponsive.

(Deposition of Clarence H. Meyers.)

Mr. Kane: No objection.

Mr. Holland: The question was: "Which is port and starboard?"

"A. Port side. He was on the port side and he was on that side of the ladder."

Mr. Kane: "The Witness: I presume they tried to swing the board this way and it swung over this way and I seen that corner hit him."

Mr. Holland: What line now, Counsel? There is no question. [116]

The Court: I think that objection is stricken, and then—

Mr. Holland: (Interposing) Line 9.

Mr. Kane: Line 9.

Mr. Holland: I would say is the next question.

Mr. Kane: Your Honor, your ruling on the answer on line 4?

The Court: Yes, I think the objection is well taken. There was no question there, Mr. Kane. It continues to be unresponsive, it appears to me.

Mr. Kane: The question on line 9.

The Court: Yes.

Mr. Holland: Yes.

"Q. Could you just describe briefly where Mr. Hawley was standing at the time he was struck?"

Mr. Holland: In line 17, the witness says:

"Well, there is an artist's conception.

"Q. Now, Mr. Meyers, giving you the diagram that you have prepared of the ship, and of the No. 1 hold, could you point out where Mr. Hawley

(Deposition of Clarence H. Meyers.)

was standing at the time you observed him struck by the load?

“A. Well, now, what do I do, point?”

The Court: Do you want to use this diagram, or not?

Mr. Kane: Yes, Your Honor, I would like to.

The Court: Do you have one there?

Mr. Holland: I have a copy, yes, sir.

The Court: I don't know whether it serves any purpose or not.

Mr. Holland: Reading the deposition, line 24, it says:

“Mr. Meyers indicates with a dot.” And that is self-explanatory.

The Court: The diagram is in evidence?

Mr. Holland: Counsel says he wants to put it in now.

Mr. Kane: Yes.

The Court: This is the original here that I have, I believe.

Mr. Holland: That is correct.

The Court: We can just pull it out. Is that all right?

Mr. Kane: Yes, sir.

The Court: You can just tear it out. You have seen it?

Mr. Holland: Yes, I have, Your Honor.

The Court: And you have no objection?

Mr. Holland: No objection, Your Honor.

The Court: The plaintiff's exhibit No.—

(Deposition of Clarence H. Meyers.)

The Clerk: (Interposing) Plaintiff's Exhibit No. 5 marked for identification. [118]

(Plaintiff's Exhibit No. 5 marked for identification and received in evidence.)

“Q. Would you identify the spot on the diagram where Mr. Hawley was standing by writing in the letter ‘H’ in front of it? “A. Yes.”

The Court: The record will show that the exhibit referred to as Plaintiff's Exhibit No. 1 in the deposition in the trial is Plaintiff's Exhibit No. 5.

Mr. Kane: Yes, Your Honor.

“Cross Examination

“By Mr. Franklin.”

“Q. Mr. Meyers, would you put a dot with the letter ‘M’ where you were standing on Plaintiff's Exhibit No. 1?

“A. This is the hatch. Naturally, I am under the hatch coaming so I don't get hurt. I must have been in here someplace (indicating).

“Q. Just put the letter ‘M’ there.

“A. That is me.

“Q. How far would you estimate you were standing from Mr. Hawley at the time, your best judgment? “A. Oh, 20 feet, maybe 25.

“Q. Who was working with you if you remember, Mr. Meyers?

“A. Well, the only one I know that was working with me was my watch partner, Perry. [119]

“Q. Mr. Perry was on your side, was he?

(Deposition of Clarence H. Meyers.)

“A. Yes. I don’t know who the rest of them working there were.

“Q. Four of you?

“A. There was five of us on that side—on each side, but Perry was my watch partner. Him and I were together; that is, on the one watch.

“Q. And he was on the starboard side?

“A. He was on the starboard side with me.

“Q. The other three members, were they natives or members of the black gang or stewards department, or do you know?

“A. Well, they could have been from shore or from the black gang. You see, when we work a ship they keep constantly changing. The only ones on there are the sailors that are regular.

“Q. Mr. Meyers, how far is that escape hatch from the square there?

“A. It is right next to it.

“Q. That is the method you climbed down?

“A. That is where you climbed down and up.

“Q. And at the time you were stowing salmon in both port and starboard wings?

“A. Yes, sir.

“Q. Was there anything unusual about the method in [120] which this particular load of salmon that struck Mr. Hawley was being lowered?

“A. Well, it was swinging.

“Q. Well, isn’t that quite a common occurrence?

“A. Oh, yes. That is a common occurrence for loads to swing.

(Deposition of Clarence H. Meyers.)

“Q. Was there a good winch driver handling the loads? “A. Yes.

“Q. What was his name, do you remember? I think I have it here—George Burnett?

“A. Yes, that’s right.

“Q. At the time this load was swinging did Mr. Hawley have ahold of it?

“A. Yes, I would say that the grabbed ahold of it.

“Q. He grabbed the bridle?

“A. Yes, I think he was on the bridle. I am pretty sure he was.

“Q. Which way was he pulling the load?

“A. Well, I don’t know whether he was pushing or pulling, but I know he had ahold of it in some way.

“Q. How many other men should there normally have been on that load, four?

“A. Well, the whole five of them could have been on there.

“Q. You just saw two of them? [121]

“A. I say the load is approximately this high and there could have been two behind and two out in the open there and then him.

“Q. How high was the load off the deck when you were pushing it, or when they were pushing it?

“A. Well, probably that high (indicating.)

“Q. Three feet? “A. Yes.

“Q. And how high? You said there were 34 cases of salmon or something like that stowed on the pallet boards? “A. Yes.

(Deposition of Clarence H. Meyers.)

“Q. Are they tiered—how many tiers were there?”

“A. That would be three up and then four on top of that. You see, that is to seal your load.

“Q. How high would that be from the pallet board? How high did the load extend or how high was it to the top of the salmon on the pallet board?”

“A. I would say 3½ or four feet.

“Q. So, of course, your vision would be obscured?”

“A. On the outside—the inside. That would be the outside for me. Now, whether I seen four, but I am pretty positive I seen three because I seen two on this side and Hawley.

“Q. You had supper at 7:00 or 6:00 o’clock?”

“A. Had what? [122]

“Q. Pardon me. Did you have breakfast at 6:00 o’clock in the morning on the day of this accident?”

“A. Yes, I am pretty sure it was 6:00 to 7:00. We started to work at 7:00.

“Q. Then when you started working at 7:00 did you start loading salmon in the wings? Had it all been filled up forward?”

“A. That I can’t answer. I know we was stowing in the wings at the time.

“Q. Well, of course, you just caught a momentary glimpse of what happened?”

Mr. Holland: The last sentence in the next answer is objected to as not responsive.

Mr. Kane: I have no objection to deleting that part.

(Deposition of Clarence H. Meyers.)

The Court: All right.

“A. Naturally. I wasn’t looking for anything.

“Q. And after the accident Mr. Hawley continued to work for the balance of the morning?

“A. Well, he continued to work, yes—how long, I don’t know.

“Q. Did you observe anything unusual in the manner of his working?

“A. No. I really didn’t pay any attention to it.

“Q. Now, I believe you told us Mr. Meyers that the usual operation is that the winch driver lowers the load, [123] the pallet board with the salmon on it about three feet off the deck, roughly?

“A. Well, yes, from that up to where you are touching the bottom of the board.

“Q. Then he holds it—the winch driver holds it there for a minute?

“A. Yes. Well, he would lower it down I say to approximately three feet and that could be 2½ or two feet so you can push your board into place.

“Q. And this particular load had been lowered down and you think it was in sort of a ’thwartship position?

“A. Yes. It was swinging this way and twisting and swinging back and forth.

“Q. And the function of the five men after the winch driver had lowered it to about three feet is to push it or twist it and push it in the direction where they want it located? “A. Yes.

“Q. And when they do that someone signals?

“A. Signals and says, ‘Drop it.’

(Deposition of Clarence H. Meyers.)

“Q. And that was the operation that was being conducted and is always conducted with a load of salmon? “A. Yes.

“Mr. Franklin: That is all.”

The Court: Do you have another one, Mr. Kane?

Mr. Kane: Yes, sir. Mr. Joseph Perry.

Mr. Holland: The other one, is it? We wouldn't be able to finish it. If you wanted to keep——

The Court: (Interposing) It wouldn't take more than fifteen or twenty minutes. What other testimony do you have?

Mr. Kane: Actually, we can postpone this. It will take fifteen or twenty minutes. The medical will be finished by Tuesday noon, so that it wouldn't make any difference, if we continued, if it is agreeable to the Court.

The Court: Mr. Anderson, how do you feel? I understand you had a cold?

Juror Number Nine: I feel fine. A little rough at the start.

The Court: I think we can get this, and finish up the depositions, as long as we are on it. [125]

(Whereupon the deposition of Raymond Joseph Perry was read, the questions being read by Mr. Kane and the answers by Mr. Holland:)

“RAYMOND JOSEPH PERRY

called as a witness at the instance of the plaintiff, having been first duly sworn by the Notary, was examined and testified as follows:

(Deposition of Raymond Joseph Perry.)

“Direct Examination

“By Mr. Spellman:

“Q. State your full name, please.

“A. Raymond Joseph Perry.

“Q. What is your address, Mr. Perry?

“A. 866 Corwin Place.

“Q. Is that in Seattle? “A. Seattle.

“Q. What is your occupation?

“A. Seaman.

“Q. About how long have you been sailing?

“A. Oh, 26 years, approximately.

“Q. What papers do you have, Mr. Perry?

“A. ‘A.B.’ as well as Second Mate, Ocean.

“Q. Are you currently on a ship?

“A. Yes, I am.

“Q. What ship is that?

“A. Iliamma, Alaska Steam. [126]

“Q. When is that ship sailing?

“A. Tomorrow.

“Q. Do you know whether or not you will be here on January 6 or any time during that week or so? “A. I don’t think so.

“Q. You intend to remain aboard the Iliamma, then? “A. Yes, sir.

“Q. Were you a member of the crew of the Square Sinnet on August 21, 1953?

“A. I was.

“Q. In what capacity did you serve on that ship? “A. ‘A.B.’ seaman.

“Q. Do you remember where you were working

(Deposition of Raymond Joseph Perry.)

on the morning of August 21, 1953—what part of the vessel?

“A. I know where I was working; but when you say the date, now, I would have to take everybody’s word for that was the date of the accident.

“Q. Where was the ship, at that time?

“A. It was at Uganik and we were loading salmon.

“Q. How many people were working, about?

“A. In the hold where I was working, five men on each side; that would be ten men.

“Q. What hold was that?

“A. Number one.

“Q. About what time did you start working the number one [127] hold that morning?

“A. I think we started at 7:00. That is the usual time. I don’t remember anything unusual about the starting.

“Q. Which side of the hold did you work on?

“A. On the port side.

“Q. Do you remember what side Mr. Hawley was working on?

“A. He was working on that side with me.

“Q. Do you recall anything unusual happening to Mr. Hawley on that morning?”

Mr. Holland: The following answer, Your Honor, is objected to as hearsay.

The Court: Was there an objection made?

Mr. Holland: No objection, it would be reserved, Your Honor, in this case.

(Deposition of Raymond Joseph Perry.)

The Court: I think it should be sustained as to what was said. Do you agree, Mr. Kane?

Mr. Kane: Yes, Your Honor.

The Court: Now, a portion of that answer is not, is that correct?

Mr. Holland: The second sentence would not be, that is correct. I will read that, then.

The Court: Yes.

“A. Of course, me being on the other side of the board and the load being between Mr. Hawley and myself, I [128] didn't actually see it hit him in the stomach.

“Q. Could you tell us where in that particular hold Mr. Hawley was standing, at the time?

“A. He was standing forward of me. We had completed loading the forward part of that hold, up to the ladder, and were then working in the wings. He was working in the part close to that forepart that we had finished, but more the wings; where I was working the after part of the wing. I don't know if that is clear or not, but——

“Q. Could you tell us where he was in relation to the ladder?

“A. Right within a few feet of the ladder.

“Q. On which side would that be?

“A. On which side in relation to me?

“Q. No. On which side—port or starboard?

“A. Port side.

“Q. Do you remember how many men were on the pallet board at the time Mr. Hawley was injured?

(Deposition of Raymond Joseph Perry.)

“A. It seems to me we had five on a side that morning. We never work with less than four on a side. But there were extra cannery workers working with this, as well as Mr. Hawley.

“Q. By ‘a side’, what do you mean?

“A. On the port side.

“Q. Do you recall how many men were on the side of the pallet board on which you were standing, at that time? [129]

“A. I believe I was on that side by myself. You see, there is a sheer drop-off, there, of about 20 feet by the bulkhead. It isn’t safe for too many men to be on the side I was on. I believe the rest of the men were on the other side or in back of it in such a way as not to get shoved on that side. That is a sheer drop-off by the bulkhead, there.

“Q. Do you recall on which side Mr. Hawley was?

“A. He was on the forward side from me. I am on the after side, where this is straight up by the bulkhead. He was on the forward part. The board is between Mr. Hawley and myself.

“Q. Assuming that this board has two ends as well as two sides, were you on the end or the side?

“Mr. Franklin: At what time are we referring?

“Mr. Spellman: I am speaking of the board.

“Mr. Franklin: At the time of Mr. Hawley’s accident or some other time?

“Mr. Spellman: At the time of his accident in particular.

(Deposition of Raymond Joseph Perry.)

“A. What was the question now?

“Q. At the time when Mr. Hawley was injured, were you on what would be called the sides of the board or on either end of the board?

“A. I would be on the end of the board. The board would come down—as it was coming in 'thwartships, I would grab [130] hold of one corner, on the end, and swing it either that way or the other way, whichever way we were swinging, at that time—in order to make the board come fore and aft. The other men would grab the other end and do likewise and then we would come over in the wing with it.

“Q. Where was Mr. Hawley standing in relation to you, at the time of his injury?

“A. He was forward of me.

“Q. Would he be on an end or on the side of the board?

“A. I assume he grabbed one of the corners to help swing it, although like I say, there was the load between me and the other fellows. Somebody was grabbing the other end because it wouldn't turn by itself, and I couldn't do it alone.

“Q. Do you remember where the other men were?

“A. I couldn't place them exactly as to spots.

“Q. Could you tell us whether or not there were any other men on the end with Mr. Hawley?

“A. Yes. There were five of us there. It couldn't be all four of them grabbing hold of it; but there were at least two men with Mr. Hawley on that

(Deposition of Raymond Joseph Perry.)

corner, there. I assume one or two of the others stood back out of the way. There is a limit as to how much room you have there.

“Q. So there would only be two, actually, on the board there? [131]

“A. There was a limit as to how much space you have there.

“Q. There were five men working the board?

“A. There normally were. They never work less than four. They get as many more as they can get when the help is available.

“Q. When did you first know anything about Mr. Hawley’s injury?

“A. When he mentioned that we were swinging the board too fast and it hit him. I can’t give you the exact time on that. It was some time—maybe 9:00 o’clock or 8:00 o’clock—whatever time it was. I would have thought nothing of it because those things happen so often, if it had not been for him—I believe around 11:30 he said his stomach hurt, and he rode the board up.

“Q. How did you get out of the hatch?

“A. He went up on the lift board—the cargo board.

“Q. At that time, what, if anything, did Mr. Hawley say to you?

“A. He said his stomach hurt him; that he was going to go up. He told me that because I was the only sailor on that side, and we try to keep the number of men even on each side. Otherwise, he probably wouldn’t even have mentioned it to me.

(Deposition of Raymond Joseph Perry.)

“Q. Do you know whether or not he worked with you during [132] the rest of the day?

“A. I know he didn’t work any more that day.

“Q. When, if ever, did you learn more about Mr. Hawley’s injury?”

Mr. Holland: I will waive the objection.

“A. Well, that evening I just heard the conversation about the ship,—that he had been hurt in the loading in the hold. Next day,—I believe it was the next day, if not late that night,—I think it was the next day, when he came in the mess room, there was some discussion there about how bad he was hurt, between him and I, the winch driver and some others. He pulled his shirt up. He had one of them loud striped polo shirts. He pulled it up. He has a pretty good sized stomach. A little trickle of blood I could see coming down from right at the navel. It looked to me and I said so at the time, that it was a ruptured navel. But I am no medical authority. I don’t know if that is what it actually was.

“Q. Mr. Perry, when, if ever, did you first see any unusual physical condition in regard to Mr. Hawley, after the accident?

“A. That was the next morning, when he showed us his stomach.”

Mr. Holland: The balance of that answer is objected to as not responsive. [133]

The Court: I think that is correct.

Mr. Kane: Line 9; line 6, pardon me.

“Q. Would you tell us what you saw?

(Deposition of Raymond Joseph Perry.)

“A. His stomach was puffed out. Whether that was a normal condition with him or not, I don’t know. He is quite a big eater.

“Q. Will you describe what you saw?

“A. A trickle of blood coming down from his navel.

“Q. Do you know whether or not Mr. Hawley worked during the rest of the voyage?

“A. I would say that he didn’t, but I wasn’t keeping no tabs on him; but I saw him around in the evening a bit.

“Q. Can you tell us what the duties of a hatch tender are, Mr. Perry?

“A. A hatch tender is used principally when the winch driver cannot see the dock. Therefore, he gives the signals for the winch driver to come back with the hooks; he stops the hooks; we put the load on, and then he gives the signal to come ahead. But that wouldn’t pertain to this case because the winch driver could see the board land in the hold. It didn’t happen on the dock. I don’t think that the hatch tender would have any bearing on this case.”

The Court: Do you waive your objection?

(No response.)

“Q. Do you know whether or not there was a hatch [134] tender on duty that day, at that time, when Mr. Hawley was injured?

“A. There was supposed to be one there. Let’s see, number one hatch—By Golly! That winch driver could never have seen that dock. There

(Deposition of Raymond Joseph Perry.)

must have been one there because that is up high. Of course, it was facing into the tide where he could see it, but there is supposed to be one there at all times whether he can see it or not. There is still supposed to be one. But I am down in the hold and if the man isn't there, I don't know it.

“Mr. Spellman: No further questions.

“Cross Examination

“By Mr. Franklin:

“Q. Mr. Perry, who was the winch driver?

“A. George Bornett.

“Q. Is he a competent winch driver?

“A. I have known George since before the war—I would say for fifteen years or so—and he has always been a winch driver. I have never heard any complaints about his driving.

“Q. At what time of the day did you first learn of Mr. Hawley's injury?

“A. The time I would guess would be around 9:00 o'clock that morning when he mentioned that he was hit by the swinging of the board. [135]

“Q. At the time he mentioned it to you, were you waiting for another load to come in?

“A. No. We had swung this load in,—and I can't tell you the exact words now about being 'too rough with the swinging' or that 'it hit me' or some words.

“Q. You don't know anything about his injury except what Mr. Hawley told you—that he had been injured? “A. That is right.

(Deposition of Raymond Joseph Perry.)

“Q. Did he tell you, right after the load had been put into position,—did he tell you right after the load struck him that he had been hurt or was it some time afterwards?

“A. I think it was right afterwards.

“Q. This particular load had been landed down in the lower hold in the usual manner, had it?

“A. Yes, it had.

“Q. And the winch driver lowers the load of salmon down to within a few feet off the deck, does he? “A. Yes; so we can get ahold of it.

“Q. There were five men to the port side, to your recollection? “A. Yes.

“Q. Each one has hold of a tag line, do they?

“A. We actually grab the bridle. It has hooks on it.

“Q. When this load was landed, first of all somebody signals the winch driver to stop, don't they, when it is [136] a few feet off the deck?

“A. Yes, if that is necessary. But if he can see—which he can in most cases—then he does it himself. It is better than having someone signal.

“Q. Do you remember, Mr. Perry—and if you don't remember, just say that you don't.

“A. Yes.

“Q. Do you remember how this particular load came down; was it facing in a fore and aft or a 'thwartships position?

“A. That particular load—as well as loads before that and afterwards—were coming in 'thwart-

(Deposition of Raymond Joseph Perry.)

ships. We had to turn them in order to swing them in the wings.

“Q. Were they landed near where you were standing—near where you and the other men were standing? “A. Oh, yes.

“Q. If it was in a 'thwartships position, that means extending across the deck, does it?

“A. That means—if this was the length of the ship that would be across the deck (indicating with hands).

“Q. The men would immediately get on each end of it, would they?

“A. They would grab hold of a corner and turn it; and then we give it a little swing to come under the coaming a little.

“Q. Where were you going to land this particular load? [137]

“A. A little under the coaming on the port side.

“Q. Did you want to land it in a fore and aft position? “A. Yes.

“Q. So the load, before you started this movement, was in a 'thwartships position and you wanted to move it into a fore and aft position, did you?

“A. Yes.

“Q. At that time, when you started in, Mr. Hawley was standing near the ladder on the in-board side of the pallet board, was he?

“A. He was standing forward of the pallet board.

“Q. He was standing forward of the pallet

(Deposition of Raymond Joseph Perry.)

board and near the ladder,—the escape hatch, was he?

“A. Well, there are four men there. Like I say, I couldn’t place those four men. But I do know that he was forward of me because of the danger of this here sheer drop-off, which I was the only one over on that side.

“Q. When you first started out, if there were five men, there would probably be two men on the forward end, two on the aft end and maybe one on the outboard end, would there?

“A. It would be an uneven number of men. Most of the men would be forward. It is hard to say just how many grabbed hold of it.

“Q. How far were you going to swing it,—how many feet? [138]

“A. Well, first of all, we have to turn it. You just don’t turn it and swing it at the same time.

“Q. The first thing you did was turn it so it was fore and aft? “A. Yes.

“Q. Then having turned it fore and aft, what did you do?

“A. We get hold of it and give it a little swing. Maybe the odd man would just push on the salmon cases, themselves,—and we would give it a little swing into the wing and as it came over the winch driver would set it down.

“Q. You say ‘swinging into the wing’?

“A. Yes.

“Q. That would be inboard, would it?

“A. Inboard, yes,—towards the dock.

(Deposition of Raymond Joseph Perry.)

“Q. Well, that would be outboard if it was towards the dock, would it not?

A. Well, we are working the wings. We swung it into the port side,—swung it to the port side.

“Q. So that the first thing you did, you changed the position or heading from 'thwartships to fore and aft, is that right? “A. Yes.

“Q. And then you shoved it out towards the skin of the ship? [139] “A. That is right.

“Q. About how far?

“A. Oh, not far. The winch driver first of all brings it over as far as he can bring it. Then we can gain another two or three feet by hanging on to it and pushing it.

“Q. Then when you have it in the position you want, you call up to the winch driver to drop it, do you? “A. Oh, he sees that.

“Q. He sees that?

“A. Yes, he sees that.

“Q. He does it automatically?

“A. He does it automatically.

“Q. Was there anything about this particular load that Mr. Hawley claims he was injured on that was different or that was done in any different fashion than you had handled the previous loads or any of the subsequent loads?

“A. Not that I know of, no—unless we were rougher than usual. But, Gee! With thousands of loads of salmon, I can't—

“Q. Do you recall, yourself, being rougher on that particular load than on any other load?

(Deposition of Raymond Joseph Perry.)

“A. Of course, we were working in an unusual position. You don’t generally have a sheer drop-off behind you.

“Q. My question was do you recall being any rougher on that particular load than you were on any other load that [140] particular load than you were on any other load that you handled that morning? “A. No; I can’t say.

“Q. Do you recall any other men being any rougher on this load that Mr. Hawley says he was injured on, than any of the other loads?

“A. Well, he could have, but I don’t know.

“Q. You don’t know. As a matter of fact, you didn’t know that Mr. Hawley was hurt, did you, until he told you? “A. No, I didn’t.

“Q. How far away from the ladder was he when he was struck?

“A. I could estimate,—say three or four or five feet; but that is just an estimate.

“Q. Two other men were there who were right in the general vicinity of where Mr. Hawley was, were they? “A. Yes.

“Q. Did they make any complaint to you that he had been injured?

“A. No. But apparently Mr. Hawley attempted to grab hold of the corner when it swung, I assume that is how it hit him.

“Q. Of course, all of you men work as a team, don’t you, Mr. Perry? “A. Oh, yes. [141]

“Q. And you have to be aware,—you have to realize that the load is going to be swung?

(Deposition of Raymond Joseph Perry.)

“A. Yes; under those conditions, there, where we were loading.

“Q. So you have to sort of keep your eyes and your ears open when that work is being done, don't you?

“A. Oh, yes; that is part of the job.

“Mr. Franklin: I think that is all. Thank you.

“Redirect Examination

“By Mr. Spellman:

“Q. Mr. Perry, do you remember—after this came down into the hold—in which direction you swung it; in other words, would that be clockwise or counter-clockwise?

“A. That is an awful hard thing for me to tell, at this time. I wouldn't want to say it was one way and have someone else say it was another way. I don't see where that is material because either corner could hit him just as well, whether it went one way or the other. There is a corner, there, and it is coming around.

“Q. I was wondering when you would swing it, whether or not you would swing it in a different direction when you were loading in one part of the hold, there, than you would swing it if you were loading it in another part of the hold, for instance.

“A. We usually get into a routine. If we are swinging [142] to the right we generally swing to the right, until we move to another spot. In other words, we can't have half the men pulling one way and half pulling the other way.

(Deposition of Raymond Joseph Perry.)

“Q. Do you recall how long you had been loading in this particular spot?

“A. Let me see,—oh, it must have been a couple of hours, I guess.

“Q. In what spot would that be, now?

“A. That would be landing them in the same place, in order to load them into the wing, since we had the forepart already loaded.

“Q. Do you recall how many men actually were pushing or pulling on the board at the time Mr. Hawley was injured?

“A. I wasn't in a position to see all of the men; in fact, I wouldn't even look. There would be some fellows who would lay back—maybe they would be pushing and maybe they wouldn't be.

“Q. So you don't know how many fellows were pushing? “A. No, I don't.

“Mr. Spellman: I have no further questions.

“Further Cross Examination

“By Mr. Franklin:

“Q. After this discussion you had with Mr. Hawley, Mr. Perry, you continued handling salmon in that particular location, for a couple of hours, didn't you? [143] “A. Oh, yes.

“Q. And you did it in the same way you always did?

“A. We didn't make any changes that I know of until we filled that up and had to come out.

“Q. Nobody else had been hurt at that particular time except Mr. Hawley?

(Deposition of Raymond Joseph Perry.)

“A. I don’t remember of any other accident. There could have been, but I don’t remember of any.”

The Court: That completes the deposition, and that is all we can accomplish today.

Ladies and Gentlemen of the Jury:

We will now recess until next Tuesday at ten o’clock. Be here a little before that.

The Court calls your attention to the admonition previously given. You will be away now, over Saturday, Sunday and Monday, and be cautious you do not discuss the matters with anyone on the outside, and be cautious you do not reach any conclusion as to any of the issues involved, until it is finally submitted to you for your verdict, and should there be any news items, as to this case, or a similar case, be cautious you do not read them until such time as you discontinue your services in this case.

You will now be excused until Tuesday at ten o’clock, and be here about fifteen minutes early. You [144] will now be excused until Tuesday at ten o’clock, and be here about fifteen minutes early.

You will now be excused.

(Whereupon, the Jury retired from the courtroom.)

The Court: Do you have any requested instructions?

Mr. Holland: I have some, but I thought I would add to them. I could file them Monday, sometime.

The Court: Will you bring them up Monday morning, then?

Mr. Holland: I will do that, yes.

The Court: All right. This trial will be recessed until Tuesday morning, January 11th, at ten o'clock a.m. Court will recess until Monday morning at ten o'clock.

(Whereupon, at 4:41 o'clock p.m. January 7, 1955, hearing in the within-entitled and numbered cause was recessed until 10:00 o'clock a.m. January 11, 1955.) [145]

FRANK J. LEIBLY

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your full name, and spell your last name, please?

The Witness: Dr. Frank J. Leibly, L-e-i-b-l-y (spelling).

Q. (By Mr. Kane): Will you state your name, address and occupation, please?

A. Dr. Frank J. Leibly, Stimson Building, Seattle, and I am a physician.

Q. Do you know Richard T. Hawley, the plaintiff?

A. Yes, I examined Mr. Hawley yesterday.

Q. Now, Doctor, what was the result of your examination?

A. I will have to go back and review the his-

(Testimony of Frank J. Leibly.)

tory to get the proper sequence of events that transpired.

He was injured aboard ship when he was struck in the abdomen by a case of salmon on the 21st of August, 1953.

Following this injury, which probably was of a [150] minor nature, which induced a break in the skin in the navel, he developed an infection of the navel. Granular tissue was excised September 9, 1953, at the Marine Hospital.

Unfortunately, he developed some sloughing of fatty tissue of the abdominal wall, and re-operated on October 8, 1953, at the Marine Hospital, and the infected tissue then removed.

He was treated in the out-patient department December 15, 1953, and finally admitted to the hospital and hot packs applied, and was operated on for a rectal hernia December 9, 1953, and discharged in January, 1954.

Unfortunately, infection continued and further fat necrosis occurred, and he was re-operated on in May, 1954, and at that time, the tissues were brought together with wire sutures.

Since May, 1954, he was treated for approximately one and one-half months in the out-patient department.

He was requested to report in to the Marine Hospital after each trip he made aboard the vessel, and on November 5th and 12th at the site of the incision, he developed small stitch abscesses, which were drained.

(Testimony of Frank J. Leibly.)

One abscess formed in December, and at the present time, this is practically healed, and there is still a scar, or a scab, in the upper portion of the incision.

Unfortunately, there is some deep seated infection [151] at the site of some of the wire sutures, and the probability is that some of the sutures will have to be removed to completely clear up the sinus tract.

Q. Doctor, have you had occasion to treat cases of this type of trauma before?

A. We all see a number of these cases where suture material becomes infected, and if the suture itself does not fluff out, it has to be removed to clear up the chronic infection.

Q. Have you had occasion to take x-rays of this?

A. Yes, I have had x-rays taken yesterday, and I believe this film shows it the best.

The radiologist counted 25 separate wire sutures in the abdomen wall.

Q. And those are the x-rays that were taken, Doctor?

A. Yes, yesterday in the Stimson Building.

Q. Now, Doctor, assume that the plaintiff in this case here was, prior to August 21st, a normal, well man when he was struck by this pallet board inflicting this trauma in his stomach, and subsequently removed to the hospital, and had frequent operations for an approximate period of about ten months; assuming these questions, these facts, Doctor, can you state with any reasonable certainty

(Testimony of Frank J. Leibly.)

in your opinion what was the cause, the probably cause of this infectious condition? [152]

A. As a result of the blow, I think one of two things, or probably both, may have happened.

Certainly, there must have been a small abrasion or a tear in the skin above the navel, and this later became infected, and, assuming from the extent of the blow there could have been deeper damage, interference with his blood supply, and so forth, so that it, therefore, was more susceptible to infection.

Q. Now, from your opinion, based on the examination of this patient, would you say that this disability is permanent?

Mr. Holland: Well, just a moment, if the Court please. I think that is assuming facts not in evidence, namely, that there is any disability.

The Court: The reporter will read the question.

(Whereupon, preceding question was read by the reporter.)

Q. (By Mr. Kane): (Continuing) That is from which the plaintiff is now suffering.

A. Well, it is permanent until remedied. Let's put it that way. That the basis of the infection at the present time probably originates from wire sutures which act as a foreign body and keep the infection active, and, until such time as the suture which is responsible, one or more, [153] for the infection is removed, the probability is there will be recurrent stitch abscesses because the wire suture will not be absorbed.

(Testimony of Frank J. Leibly.)

Mr. Kane: If there is no objection, I would like to offer the x-rays in evidence at this time.

Mr. Holland: I would like to question the doctor, if the Court please.

The Court: You may.

Mr. Kane: I have no further questions then at this time.

Mr. Holland: All right.

Cross Examination

Q. (By Mr. Holland): Then all the x-rays, Doctor, were they taken in your office?

A. No, they were not. They were taken by Dr. Homer V. Hartzell, radiologist.

Q. And did he give you—

A. (Interposing) I have his typed report here.

Mr. Holland: On the request for the x-rays, I think it would be competent if the Doctor who took, and also diagnosed and described the x-rays were called, rather than Dr. Leibly, who takes Dr. Hartzell's comments, and it is hearsay. [154]

The Court: If you object, the Court will sustain the objection.

Q. (By Mr. Holland): Doctor, is that the only time you have seen Mr. Hawley?

A. That is correct.

Q. Just yesterday?

A. That is correct.

Q. And did you, at any time, ever have an opportunity to examine the Public Health Service records at the Marine Hospital?

(Testimony of Frank J. Leibly.)

A. I examined the abstracts of his records, not the original records.

Q. Mr. Hawley brought them to you?

A. That is correct.

Q. Did the abstracts, Doctor, show any indication of a cysticorrhaphy that had been performed at the Marine Hospital?

A. It did, but that was not connected or associated with the condition that is under consideration at the moment.

Q. Will you tell me what I meant by a cysticorrhaphy?

A. It is an examination of the interior of the rectum through an instrument to visualize the wall, the lining, inside the rectum, and a small tumor was detected and removed. [155]

Q. A small what? A. A small tumor.

Q. Will you tell us whether that has any relationship to this?

A. As far as I can see, it was coincidental.

Q. Did the abstract show you his period of hospitalization for the purpose of that examination?

A. No, it didn't. He was treated for that along with this—with the other treatment, and it didn't state that any additional hospitalization was required because of that.

Q. I see; did Mr. Hawley give you his history of some slight drainage during the period after he had returned to work and was sailing, following which he reported as an out-patient?

(Testimony of Frank J. Leibly.)

A. Yes, drainage kept reoccurring from time to time.

Q. Was that a disabling condition as far as his regular work was concerned?

A. Probably not disabling, no. It was of minor consequence at the time.

Q. You spoke, Doctor, of the two probable causes of this condition, one being a tear, or an abrasion, in the area, and the other being the possibility of a more profound blow, or more——

A. (Interposing) The second consideration would be [156] conjectural.

Q. I see. Doctor, I presume in your medical education, and college education, you took physics to some extent, Doctor? A. Yes.

Q. What would be your opinion as to a free, swinging blow of some 1700 pounds on a board with a corner on it, which Mr. Hawley tells us hit him, that amount of weight being in the air, stationary, and then from a dead stop being swung a quarter turn; what would be your opinion of two or three men turning that with sufficient force to cause a blow which will be extensive enough to cause this condition?

A. As I stated, it isn't the amount of force necessary, as long as it was sufficient to cause a break in the skin. Bacteria are ordinarily on the surface of the skin, and it only takes a minor break to permit these organisms to get under the skin, and to start developing and start the infection.

(Testimony of Frank J. Leibly.)

Q. That kind of a break could be caused by a person rubbing up against a stationary object?

A. Well, we have all had minor scratches and bruises from a thousand things. It could.

Q. You were referring to an abrasion. I took it to be one or two possible causes, the one being, if it was a harder blow, which was causing infection of some sort? [157]

A. That is correct, and I have no knowledge that there was such a blow. It is a possibility.

Q. Doctor, did you observe any general skin condition of Mr. Hawley other than he told us about?

A. He had a healed acne, rather extensive over his back, which shows rather considerable scar tissue formation. That is not active. It goes back a number of years. Other than that, nothing.

Q. Wouldn't that indicate some condition in the system that would make him probably more susceptible to this type of infection?

A. If it occurred twenty or thirty years ago, it would have, but at the present time, the acne is completely inactive.

Q. Have you, in your—what is the name, Doctor, for this type of infection in that particular area; is there a name for it?

A. No, just infection, localized infection; probably cellulitis.

Q. Umbilitis, too?

A. Umbilitis, meaning pertaining to the umbilicus, or the navel.

(Testimony of Frank J. Leibly.)

Q. That is the name for it?

A. That merely localizes the site at which the infection occurred.

Q. Have you, in your experience, observed other [158] cases? A. I have seen other cases.

Q. Of umbilitis, let me finish, resulting from a history of trauma?

A. They can originate spontaneously by bits of foreign matter, cullular decrease, and so forth, and dirt accumulated in the navel causing irritation and break in the skin.

Q. Without injury?

A. It can occur without injury, it is possible.

Q. And isn't it true that the normal type of umbilitis is that type?

A. That I couldn't say. Probably that would represent the greater portion of them.

Q. And isn't it true that it is probably more prevalent and found in younger children and babies than in older people?

A. It would be much more common, of course, in infancy because that is the site at which the navel cord is attached, the umbilical cord, and during infancy and early childhood it is more tender and more delicate, and more probable of infection. As one grows older, the tissues do thicken up, and the likelihood of infection becomes less possible.

Q. When you say it is oftentimes spontaneous, without injury, is that in many cases related to personal hygiene? [159]

A. Oh, I suppose so.

(Testimony of Frank J. Leibly.)

Mr. Holland: I have no further questions.

Redirect Examination

Q. (By Mr. Kane): Doctor, you had the opportunity to examine these x-rays, did you not?

A. Yes, I did.

Q. And your interpretation of those x-rays are from your reading of them?

A. Yes, because all the x-rays can possibly show are the wire sutures which are present.

Mr. Kane: I have no further questions.

Well, now, Doctor, in your opinion, a blow in this particular area probably could cause this trauma?

Mr. Holland: Now, just a moment. That is objected to as leading, if the Court please.

Mr. Kane: He is an expert witness.

Mr. Holland: But still leading, Counsel.

The Court: It is leading, but I think leading questions may be permissible with an expert witness and the Court will overrule the objection.

Q. (By Mr. Kane): (Continuing) If this man was well, Doctor, and he received this blow and trauma developed at or from this [160] trauma—this infection developed, which was not there before, in your opinion it probably arose out of that?

A. Oh, yes; it certainly could. Trauma that would cause a break in the skin could definitely lead to infection following.

Mr. Kane: I have no further questions.

(Testimony of Frank J. Leibly.)

Cross Examination

Q. (By Mr. Holland): Then, Doctor, there is nothing inconsistent with what you found—

Pardon me, to rephrase that:

There is nothing in what you found in Mr. Hawley that would be inconsistent with this condition in his case being spontaneous, without injury, is there?

A. We can put it this way: Mr. Hawley is fifty years old at the present time. He never developed spontaneous infection previously. Infection did follow trauma. It may have been a coincidence, but the probability of coincidence is not likely.

Q. Of course, in that instance, you assumed the trauma he told you about?

A. That is correct.

Q. And that is all you know about his history?

A. That is all I know.

Mr. Holland: No further questions. [161]

Mr. Kane: That is all.

The Court: That is all, Doctor. You may be excused.

Mr. Kane: I would like to renew my motion to admit the x-rays.

The Witness: Who has the x-rays?

The Court: You may leave them here.

Mr. Holland: If the Court please, as far as the Doctor being excused, I understand the Public Health records may now be put in evidence, and it is possible I may wish to ask the Doctor about

some of those, if they are offered in evidence by counsel.

The Court: These are records upon which he based his examination?

Mr. Holland: No, records of the Public Health Hospital which the Doctor has not seen, nor which counsel or I have seen.

Mr. Kane: They are right here.

The Court: If there is no objection to that.

The Witness: I don't object, Your Honor.

The Court: You may step down, then. Do you wish him to remain?

Mr. Holland: I will advise him, Your Honor.

CAROL ROE

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: State your full name and spell your last name, please.

The Witness: Carol Roe, R-o-e (spelling).

Q. (By Mr. Kane): Will you state your name, address and occupation, please?

A. Carol Roe, 5034 7th Northeast. I am the Assistant Medical Record Librarian at the Public Service Hospital.

Q. And are you custodian of those medical records, Miss Roe? A. That is right.

Q. Do you have with you today the medical records of Mr. Hawley? A. Yes, I do.

(Testimony of Carol Roe.)

Q. And where did you obtain those records?

A. From the Medical Records Department of the Public Health Service Hospital.

Q. And what do those records contain?

A. Well, they contain notations by doctors, nurses, and anyone who treated Mr. Hawley while he was in the hospital. [163]

Q. Now, would you return those records to us, Miss Roe?

A. They are rather voluminous.

Q. I beg pardon. Well, you don't have any historical summary?

A. He was admitted—let's see.

The Court: You are identifying the records now?

Mr. Kane: Yes, sir.

The Court: Ordinarily, if they are admitted, I think the records should be read by counsel, if you wish, unless something facilitates identification here. Are you going to object to identification here?

Mr. Holland: No, your Honor.

Q. (By Mr. Kane): And did you also bring in x-rays of Mr. Hawley's condition?

A. Yes, I did.

Mr. Kane: I would like to offer those records. The x-rays and the medical records at this time.

Mr. Holland: May I ask the witness one question?

The Court: *On voir dire?*

Mr. Holland: Yes.

Miss Roe, do you have all the records that the hospital has of Mr. Hawley?

(Testimony of Carol Roe.)

The Witness: Yes, I do. [164]

Mr. Holland: As of today?

The Witness: Yes.

Mr. Holland: No objection, Your Honor.

The Court: They haven't been marked, have they?

Mr. Kane: No, we will have them marked and offered in evidence, if the Court please.

The Court: If there is no other questions, Miss Roe may be excused.

Mr. Holland: No other questions.

(Witness excused.)

The Clerk: Plaintiff's Exhibit 6, marked.

(Plaintiff's Exhibit 6 marked for identification.)

Mr. Kane: We would like permission of the Court and Counsel, if there is no objection, to withdraw these medical records at the termination of the action.

Mr. Holland: There will be no objection, then. Well, I should withdraw that. I think we should wait until that time comes before we decide about withdrawing.

The Court: I think it is generally understood after a case is completed, including any possible appeal, if there should be any, upon final determination, upon stipulation of counsel they may be withdrawn.

Mr. Holland: Yes. If the chart and the x-rays [165] together?

The Clerk: Pardon?

Mr. Holland: Were the chart and the x-rays marked together?

The Clerk: No. I am marking them separately. Plaintiff's Exhibit 6 is the chart. Should I mark this as one exhibit?

The Court: The x-rays attached to the statement may be marked as one exhibit, if agreeable.

Mr. Kane: No objection.

Mr. Holland: No objection.

May I see the chart?

(Whereupon, proposed exhibit was handed to Mr. Holland by the Clerk.)

The Clerk: Plaintiff's Exhibits 7, 8, 9, 10 and 11 marked, admitted in evidence.

(Plaintiff's Exhibits 7, 8, 9, 10, 11 marked for identification.)

The Clerk: Admitted in evidence.

The Court: There is no objection, as I understand?

Mr. Holland: No objection.

The Court: They may be admitted. Plaintiff's Exhibit 6 is also admitted.

(Plaintiff's Exhibits Nos. 6, 7, 8, 9, 10 and 11 admitted in [166] evidence.)

The Court: That completes your testimony?

Mr. Kane: Yes, Your Honor.

The Court: Now, Mr. Holland?

Mr. Holland: Yes, I would like to ask the Doctor a few questions.

The Court: In connection with the records?

Mr. Holland: In connection with the records, yes.

The Court: Will you take the stand, please?

FRANK J. LEIBLY

upon being recalled as a witness for and on behalf of the plaintiff, and having been previously duly sworn, testified as follows:

Recross Examination—(Continued)

Mr. Holland: May I approach the rostrum?

The Court: Yes, you may.

Q. (By Mr. Holland): Doctor, as I have indicated, neither counsel nor I had an opportunity to examine these records, and neither have you, and we have had no other medical assistance at this time, and the records are quite voluminous, but I do notice a couple of comments, Doctor.

One comment which says that this 49-year-old able seaman has had an interesting history. In August, 1952, patient was hit with a load of fish, evidently before this, and had an umbilical cyst.

A. An umbilical cyst is a small sack-like structure under the skin. He may have been born with it, or acquired it during the individual's lifetime.

Q. And since Mr. Hawley didn't tell you about the existence of that before this particular incident, it is quite probable that he didn't know about it, is that true?

A. It is quite probable that he did not know of it.

Q. And I notice the comment, Doctor, under date of [168] June, 1954, this 49-year-old white male seaman was readmitted to the hospital at this

(Testimony of Frank J. Leibly.)
time, complaining of abdominal pain and in the fall of 1953, he had an abdominal infection due to, possibly related to, actinoma.

A. That is related to a form of fungus infection. I don't believe that the organism was positively identified as that.

Q. Because they said "possibly"?

A. Possibly.

Q. But, anyway, a bizarre organism would not indicate a trauma or a blow?

A. No, that doesn't follow at all. It means that the organism responsible for the infection was of an unusual type.

Mr. Holland: Pardon me just a moment, Doctor, before we let you go.

The Clerk: Your Honor, I discovered another x-ray here, so that there will be plaintiff's Exhibit 12 also.

The Court: Plaintiff's Exhibit 12 may be admitted.

(Plaintiff's Exhibit No. 12 marked for identification and admitted in evidence.)

Mr. Holland: I have no further questions. Thank you, Doctor.

The Court: Do you have any questions? [169]

Mr. Kane: No further questions.

The Court: That is all, Doctor. You may be excused.

The Witness: Thank you, sir.

(Witness excused.)

Mr. Kane: The plaintiff has nothing further, Your Honor, and rests.

Mr. Holland: The Defendant has a matter to take up with the Court.

The Court: In the absence of the Jury?

Mr. Holland: Yes.

The Court: Members of the Jury, you will now be excused, and the Court calls your attention to the admonition given you last week; namely, that you are to be cautious not to confer with one another regarding any matters relating to this case, or not to discuss it with anyone on the outside, or to discuss any matters that may relate to the merits of this case.

You should be cautious not to form any conclusions or reach any opinions regarding the merits of this case until it is finally submitted to you for your verdict.

You may now be excused.

(Whereupon, the jury retired from the courtroom.)

The Court: Mr. Holland?

Mr. Holland: If the Court please, the defendant [170] moves at this time to dismiss the claim of the plaintiff for the reason he has completely failed to establish any allegation of negligence.

Referring to page 2 of plaintiff's contentions, I will note those there with my comments. Oh, page 2 of the pre-trial order.

Plaintiff's contentions, the first comment is:

"That * * * a pallet board was pushed into the

pit of plaintiff's stomach, pinning him between the pallet board and cases of cans."

That has not been proven.

The second paragraph, that we swung the pallet board negligently "so that it would strike the plaintiff while plaintiff was standing in an area from which he could not escape the impact."

Whether there was negligence or not, is set forth more completely in paragraph IV which reiterates the same thing. They say, first, in paragraph IV that we "failed and neglected to supply the plaintiff with a safe place to work."

There has been nothing shown in this case whatsoever, other than a ten-inch movement of the pallet board that there was anything wrong with the place in which this man was working. They make no complaint, nor does the testimony substantiate that there was not [171] ample room for this man to stand if, in fact, he was standing in a place from which he could not escape.

They say we "failed to supply the plaintiff with a sufficient number of co-employees."

There is no evidence that the number of men who were in the hatch, and I think there was eight or ten, five on each side, was insufficient; no evidence whatsoever that the number of men were insufficient.

There was evidence concerning the officers. There was evidence that the mate, whether it was the chief or the mate, of the watch at least, was in charge of the loading, and that he was on the vessel.

There was no evidence showing where he was at the time.

I don't believe it was said he was in the hold, but there is certainly no evidence to show that his absence from the hold, every precise moment, constituted negligence.

They say we "failed to properly instruct plaintiff in the course of his duties."

There is no evidence here by the plaintiff, or the other witnesses by depositions, that there was anything that we could have instructed him to do that he did not know about when he was injured, or that there was anything wrong other than he was standing in the way of the board. [172]

Next, that we "failed to properly superintend and supervise the work."

The same comment, plus the fact that the plaintiff himself admitted that this one man, I forget his name, one of the seamen of the ten, was nominated by the group to take care of the work, and this one man split the men into two sections and delegated the work to be done on each side, and apparently there was complete supervision of this work, if not the mate at every precise moment, because they had one man that was down in the hold at all times. There was no evidence that this one man was an improper person, or incapable of doing what he says we should have done.

Next, that we "failed to promulgate and enforce proper and safe rules for the safe conduct of said work."

There is no showing what rules we might have

done. There is no showing of the absence of any specific rule.

In brief, there is nothing in the evidence about that claim at all.

Now, counsel will argue, of course, which is the only evidence tending towards this, that there were three men who were inexperienced and who swung the board in a certain way. However, the only person here who [173] even attempted to say that these men were inexperienced is a man who was incapable, as an expert, of saying that, because he was inexperienced himself, and that is Mr. Hawley. He said they were inexperienced, but yet, in spite of the years of work, he said he himself was inexperienced. We need an expert of some sort, an expert who has had sufficient experience to qualify himself as an expert on men, in order for him to do any analyzing of anybody else's work.

That particular point, I think, is the only thing here of which counsel could claim any negligence, and that was done by no person who had any right to tell us whether or not these other men were experienced or inexperienced, and I think by reason of all I have said, that there has been no showing in this case whatsoever.

The Court: Mr. Kane?

Mr. Kane: Your Honor, at this time, in reply, I would like to say this:

That there has been ample testimony by the plaintiff here that he was in a position, backed up against cases of salmon. We have a 1700 pound pallet board coming down and swinging free, and throws him

back, and I can daresay, your Honor, that that is what we mean by "pinning"; he was pinned back, and he [174] couldn't get out of the way.

If there was cargo up in back, he could not step back, and he was pinned in and couldn't get out.

He testified he couldn't go back due to the cases of salmon. To the left, the pallet board was swinging in that direction, and would have struck him in the back, and he couldn't go to the right because a ladder would have struck him. That is what we mean by "pinning in".

Now, counsel said something on a safe place to work. We have ample testimony that this man was on a platform. This platform had to swing between where Hawley was, and the others. It was piled high. Nobody could see one another. There was nobody in there in general to supervise, to explain or to direct the operations of the work. The pallet board came down, and the men grabbed it, and they couldn't see where it was to be located, and they had a general idea, and then it was to be put into place. Here was this man, the plaintiff in this action, backed up against these cases of salmon, and the pallet board had to come down close to him. There was a drop in which those other men would have gone down.

Now, I don't think that is a safe place to work. I think it is important that these vessels be loaded, but [175] I think at the same time, we have got to be sure that these people here that work on these jobs have a safe place.

The Court: What testimony is there that it is not safe?

Mr. Kane: Well, the very fact that we had a drop on the back, which was testified to, and the diagram there, that there was a fifteen-foot drop behind this man Perry, 15-foot drop that forced this pallet board to be shoved forward where Hawley was working.

The Court: Of course, there was no testimony that that isn't a customary and regular way of loading these ships.

Mr. Kane: Well, your Honor, there was no testimony that this was the regular way, with a drop of fifteen feet behind. They might have done that on one occasion.

The Court: The Plaintiff, of course, wasn't on the drop.

Mr. Kane: No, but the fact that he had to be away from the drop forced the pallet board forward, to where he was pinned in at all times unless the work was synchronized. If any little slip came in the movement of the pallet board, this plaintiff was in a precarious position.

We have had testimony also that we have had three men, inexperienced cannery workers, in a position that this man was with three inexperienced men, working on that pallet board, supposedly swinging it around, and there was an agreement that they had that it was to go clockwise, and then it went counter-clockwise.

The Court: Mr. Perry was directing it, was he not?

Mr. Kane: He couldn't have directed it, because he couldn't see these men. This pallet board was piled high. No one could see one another. No one could see the other persons, and here we have this man with his back against the cargo. The board has come down close to him. There can be no slip-up. Any slip-up is going to knock Perry off of the platform. If it goes forward, it will run Hawley into the cases, which it did.

I think in this operation here we should not have had three cannery workers and a wiper bringing down a 1700 pound pallet board and attempting to put it into place. This man was brought out of the engine room to do this particular type of work. We should have had more men there and there should have been sailors there to do this type of work when it was in this position. We have had testimony to that effect.

There was the drop on the one side, and he was up against the cases on the other; and here we have [177] three cannery workers and a wiper and one experienced man who knew how to handle that cargo. One experienced man. There has been no evidence here that anyone was directing it. Perry couldn't direct it. He had to watch himself off the back. He couldn't see the other men. He couldn't direct it.

So, here we have each man practically operating on his own, where we have a gang working in which there should have been someone there, some superintendent, some of the mates, to direct this type of work.

Now, as a result, this man was struck with a pallet board, and was ten months in the hospital, Your Honor. A rather serious hospitalization.

Now, I think failure to promulgate and enforce proper and safe rules—I think something should have been put up in that area in the back. It was for the Company's purpose that that hole was left in the rear behind Perry. They didn't want to get the salmon too close to the fish meal. This situation was created for a purpose, Your Honor. It wasn't something that just arose. There was that space there requiring Perry to keep in as close as he could, and to get that pallet board as far forward as possible, and in doing that, if the work were right, and everybody worked as they should have, Hawley would not have gotten hurt, but [178] Hawley got hurt, Your Honor, because of the manner in which this load was being put into this vessel. There was speed. They needed to work fast, and they were moving fast.

I think we have proved by a preponderance of the evidence that this whole area here was unsafe. There should have been a net behind Perry, and they should have built up the cases where he would have some protection, and Perry could have moved back, or to the side, without being in jeopardy, but he couldn't do that, Your Honor.

I think here we have proved, by a preponderance of the evidence, that there has been negligence here, and that this is a question of fact to go to the jury.

Mr. Holland: May I make two comments, Your Honor?

The Court: You may.

Mr. Holland: First, of course, Perry wasn't the man that was hurt, so that what the conditions were back there haven't been claimed or alleged.

Secondly, if Perry was the man doing the work, and couldn't see the men, counsel would argue that we should have a mate down there. How could he see the men if they were invisible to each other?

Then, he would argue we should have a mate on each corner of the pallet board, which is a reduction to an [179] absurdity.

And then Counsel speaks of this man being pinned into the salmon with no way to get away. Your Honor will recall Mr. Hawley testified he stepped back into the wings to get out of the way of a fall, and the board was in a cross position, and then he stepped out to put his hands on it, and he stepped out two paces and what his estimate was, I don't recall of that distance, but it was at least three or four feet, and then he put his hands on the board, at which time the board came at him, and I had very much difficulty, if the Court please, up to this point, to find out what the conditions were there.

But, in any event, that is the condition of the measurements; but, in any event, Mr. Hawley stepped out to do that. He stepped out to the pallet board to do his work, and put his hands on it and there were no complaints about the men not seeing each other, and the board came at him. Mr. Hawley says it moved ten inches towards him. Even if we assume that a 1700 pound load from a standing

position, standing free, could be pushed with such rapidity to cause this injury, even if we assume that, with his hands on it, he knew it was coming towards him, and he had—ten inches, he says the board moved—but he had at least three feet, to say nothing [180] from some of his testimony that the salmon was even back behind that some little distance, so that I think the idea that counsel has that this man was in a precarious position and that it came down square in front of him is not pointed out by the evidence.

Mr. Kane: I would like to reply.

I think the evidence indicates that this board was moving when it came down. The plaintiff testified that the board was moving.

The Court: I understand.

Mr. Kane: And he stepped out to grab it, and as he grabbed, it was swung in the opposite direction, and the board, swinging in a counter-clockwise direction, threw him back. I don't think the pallet board was just suspended right in the air for the boys to step out and grab it. I think we have a particular situation here where they were trying to load this cargo and get as much in as possible, and they wanted to protect the salmon from the fish meal and it was perfectly all right if no one got hurt, but when we ask the American working man to work under those conditions where we have to put a 1700 pound load in a spot, or else someone will get hurt, I think there is negligence.

There would be no need for a mate or anybody else to be at each corner of the board. They had to

have just [181] one man there supervising and checking when you have inexperienced men, and if we had five sailors there, men who knew their work, there was no need for anyone there.

As soon as these men were there—it happened one-half hour after they started work.

The Court: One and one-half hours.

Mr. Kane: And here we have three cannery workers, the majority of the crew, and one wiper. Out of five men, Your Honor, none of them experienced stevedores and longshoremen, and no one there to tell them how this thing was to go, and we have a 1700 pound load, and these men in a tight corner. If this was out in the open, and on a platform, we wouldn't have had this condition and those men could have gotten along all right, and if they made errors in judgment, nothing would have happened, but I think we have shown negligence due to the precarious position they put this man in, and this load having to go near to Hawley at all times to save the other men. They didn't attempt to build up the other end. They didn't want to destroy the salmon with the odor of the fish. There was no attempt to put a railing or a life net down there which we consider proper and safe rules in case the men fell.

I have nothing further. [182]

The Court: Well, I have reviewed my notes and I think the motion will have to be granted.

I don't believe the Court can assume from the evidence here that the circumstances were such—

place of work such that in and of itself it constituted an unsafe place to work.

There is no evidence, as I indicated in the question of Counsel, as to what any custom may be or practice may be. I think by the very nature of the work—load and pile salmon, or whatever it may be, and stack it up—and the nature of the work itself it constituted an unsafe place to work.

There is no evidence, as I indicated in the question of Counsel, as to what any custom may be or practice may be. I think by the very nature of the work—load and pile salmon, or whatever it may be, and stack it up—and the nature of the work itself may involve, of course, dangers that are incident and a part of the work but I can't see that it isn't a situation where the circumstances—where the doctrine of *res ipsa loquitur* applies, and there isn't any evidence that I think would justify letting the case go to the jury for a finding on that matter.

As to how this happened, it is true enough the pallet board came down and was in a swinging motion, [183] and my notes indicate that the plaintiff grabbed the line to steady it, but just how it happened to swing in to him, or towards him, is unclear. The fact that the cannery workers may have been inexperienced in and of itself, I don't think, is a ground of negligence without some showing, clearer showing or some showing, as to what they did.

Perry was selected there to supervise, was working there and he, of course, was experienced. There is nothing in his testimony, Perry's testimony, to

indicate what happened; and, while the plaintiff has suffered an injury here and I am reluctant to take a case from the jury when I think there is some ground of negligence established that will justify going and taking a case to a jury, yet I feel bound, and I am bound by the rules of law which do require some showing of negligence such that it would justify a jury's passing upon it. But, frankly, I can not see in the evidence here sufficient to justify the case going to the jury and, therefore, the Court is compelled reluctantly to grant the motion.

Mr. Kane: Your Honor, if I may say this at this time: We accept your ruling and we want to point out to you that in this type of case the benefit of doubt should be given to the Plaintiff.

We feel that this is a question of fact whether [184] there has been negligence here and we think that should be left to the jury, and we think we have established a prima facie case by showing the circumstances.

The Court: Mr. Kane, I know undoubtedly that is what you feel but, as I say, I have searched this record and have listened attentively to the testimony, and then knowing, of course, that there must be some showing of negligence by the testimony before the matter can go to the jury, and the Court has the responsibility to pass upon that and I frankly don't think there is any doubt in my mind that there has been a failure.

Mr. Kane: Well, all the Plaintiff has to do, Your Honor, is to establish a prima facie case.

The Court: Well, I don't think you have established a prima facie case.

Mr. Kane: And we feel in this area in which these men were working we have established a prima facie case with three men on a seventeen hundred pound pallet board and this man backed up against the cases. We think that established a prima facie case and I would like to have you reconsider.

The Court: And it is entirely conjectural that they were three inexperienced men. [185]

Mr. Kane: That is the duty of the Company to know. That is the reason we have alleged there was a lack of supervision, and that there should have been that supervision there because no one could see one another. We had five men working on the board which required coordinated work and everyone was working on their own and it was the duty of the Company to have a safe place to work and have those men working together. That could only be done by supervision and as a result of that lack of supervision, these men changing the direction in which the load was turned, was negligence.

The Court: I recognize if anyone is injured it is extremely unfortunate and, of course, if there is any liability or showing of negligence, of course, the matter goes to the jury for determination; but I just don't see, Mr. Kane, that there has been that and I can't find from the evidence that—having in mind that this is loading of a vessel in the hold and in an out of the way port, having in mind that the union agreement as described in the evidence

provides for men such as the plaintiff to accept this work should he choose, I just can't find that the method of loading cargo, with the men available for the work—the type of men—I just can't find that the Company was negligent in following that procedure under the evidence. [186]

Mr. Kane: I think if this man was called as an inexperienced wiper they should have called other sailors, not cannery workers; and we would also like to make a motion for a new trial at this time.

The Court: Of course, I think you are entitled to make your motion and the Court will grant the motion to dismiss and you, of course, may make your motion for a new trial.

Mr. Kane: Thank you.

The Court: You will call the jury.

There is nothing further?

(Whereupon, the jury was returned to the courtroom.)

The Court: You may be seated.

Ladies and Gentlemen of the Jury:

The Court has ruled that there has not been sufficient evidence introduced to justify the case going to the jury.

In other words, the Court has ruled, as a matter of law, that there hasn't been sufficient evidence to establish negligence in this case—by the plaintiff to establish negligence on the part of the Defendant and, therefore, the Court has granted the motion of the Defendant to dismiss the case and that terminates the case and you are now excused. [187]

The Court wants to thank you for your atten-

tion and the inconvenience that the service has caused you and will excuse you now and the earliest time you would be called is next Tuesday. However, do not report until the Clerk calls you.

You are now excused and there is no probability that you will be called again before next week.

Thank you, very much.

(Whereupon, the jury retired from the courtroom.)

The Court: Is there anything further?

Mr. Holland: Thank you, Your Honor.

The Court: Court will recess until two o'clock.

(Whereupon, hearing in the within-entitled and numbered cause was adjourned at 11:21 o'clock a.m., January 11, 1955.) [188]

[Endorsed]: Filed May 10, 1955.

[Endorsed]: No. 14758. United States Court of Appeals for the Ninth Circuit. Richard T. Hawley, Appellant, vs. Alaska Steamship Company, a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: May 9, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14758

RICHARD T. HAWLEY, Plaintiff,

vs.

ALASKA STEAMSHIP COMPANY, a corpora-
tion, Defendant.

APPELLANT'S STATEMENT OF POINTS

Comes now the Plaintiff-Appellant herein and pursuant to Rule 19(6) of this Court sets forth the points on which he intends to rely as follows, to-wit:

1. That the Trial Court committed reversible error in granting the motion of the Defendant for a dismissal of this cause at the conclusion of the Plaintiff's case on the grounds of insufficiency of the evidence, for the reason that the testimony of the witnesses for the Plaintiff did establish a prima facie case in favor of the Plaintiff and raised a question of fact for the Jury to decide.

2. That the Trial Court committed reversible error in issuing and signing an Order of Dismissal based upon the motion of the Defendant challenging the sufficiency of the evidence at the conclusion of the Plaintiff's case.

Respectfully submitted this 11th day of May, 1955.

/s/ KANE & SPELLMAN,
Attorneys for Plaintiff-Appellant

[Endorsed]: Filed May 13, 1955. Paul P. O'Brien,
Clerk.



United States Court of Appeals
For the Ninth Circuit

RICHARD T. HAWLEY, *Appellant*,

vs.

ALASKA STEAMSHIP COMPANY, a corporation, *Appellee*.

UPON APPEAL FROM THE DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON, NORTHERN
DIVISION

BRIEF OF APPELLANT

FILED

SEP 15 1955

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United States Court of Appeals For the Ninth Circuit

RICHARD T. HAWLEY,	<i>Appellant,</i>	} No. 14758
vs.		
ALASKA STEAMSHIP COMPANY, a corpo- ration,	<i>Appellee.</i>	

UPON APPEAL FROM THE DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON, NORTHERN
DIVISION

BRIEF OF APPELLANT

JURISDICTION

The United States District Court for the Western District of Washington, Northern Division, acquired jurisdiction pursuant to Title 28 U.S.C. Sec. 1331 and Title 46 U.S.C. Sec. 688, and the case was tried in the District Court before the court and a jury, according to the Federal Rules of Civil Procedure. After a trial before a jury lasting several days, the court granted a motion by defendant for dismissal at the close of plaintiff's case on the ground of insufficiency of the evidence to prove a cause of action, and on May 11, 1955, the court entered a final order, a Judgment and Order of Dismissal, *nunc pro tunc* as of February 9, 1955 (R-37). On January 21, 1955, plaintiff filed a Motion for New Trial, supported by an affidavit (R-25 & 26), and at a hearing thereon the motion was denied by an order

dated February 9, 1955 (R-30). Notice of Appeal was filed by the plaintiff on March 4, 1955, and the Cost Bond filed on March 8, 1955 (R-31-32 & 33).

This appeal is being prosecuted pursuant to Rule 73 of the Federal Rules of Civil Procedure and was perfected in accordance with the provisions of Rule 75 of the Federal Rules of Civil Procedure and the Rules of the Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE

This is an action brought under the JONES ACT (R-3). The appellant, an American seaman, 49 years of age, was serving as a member of the Engine Department of the M/V SQUARE SINNETT on August 21, 1953 (R-10).

On August 21, 1953, at about 8:30 A.M., the appellant was injured while working in the No. 1 hold of the M/V SQUARE SINNETT when a pallet board loaded with 34 cases of canned salmon weighing 1,700 pounds (R-171) struck him in the abdomen (R-95) and forced him back against a row of salmon cases, which were stacked approximately 3 feet behind the position in which he was required to work (R-120). This blow resulted in serious injuries, requiring hospitalization upon the return of the vessel to the Port of Seattle (R-125-126-203-204).

The appellant was ordered to work in the hold on August 21, 1953, by the Chief Mate of the vessel (R-109). Upon reporting to the hold for work, the appellant was assigned to the port side where he and 4 other men were to work cargo loading salmon (R-92-93). A seaman named Raymond J. Perry was in charge of the

hold as far as assigning the men to port or starboard side, and he put 2 of the ship's sailors and 3 members of the Engine Department on the starboard side, and the appellant, himself, and 3 inexperienced cannery workers from the cannery at Uganik, Kodiak Island, where the vessel was loading, were assigned to the port side (R-95 & 111). It was agreed between the 5 men on the port side that when the pallet board loaded with cases of salmon was lowered into the hold by the ship's winches, it would be swung in a clockwise direction as far as possible to a fore and aft position, in order to gain more leeway as it went under the port wing of the ship (R-94-95). At the time the pallet board struck the appellant, it was swung in a counter-clockwise direction, thus causing the board to strike him (R-95).

The swinging of the board in a clockwise direction was to prevent the possibility, as much as possible, of the board swinging too far forward to tiers of salmon behind the appellant (R-94-95-199).

The area upon which the men were working consisted of tiers of cased salmon previously loaded into the hold and comprised a total area of approximately 15 feet (R-104) straight back from the pallet board and across the whole of the ship (R-104-105). At the after end of the hold there had previously been stacked sacks of fish meal, and a space of approximately 4 feet was left between the fish meal and the cases of salmon to prevent contamination of the salmon (R-99). The level of the platform was 12 to 20 feet off the bottom of the vessel, leaving a drop-off of that distance behind where Perry was working (R-199-188).

The appellant, in the forward end of the hold opposite Perry, had only 2 to 3 feet between the edge of the hatch coaming and the tiers of salmon behind him, and was unable to escape to his left because of the existence of an escape ladder at that point (R-105). Perry, in the after portion of the hold, had only a distance of 5 feet to work between the area where the pallet board would clear the hatch coaming and the drop-off behind him (R-99).

At no time on August 21 between 7:00 A.M., when he reported for work and the time he left the hold, did the appellant ever receive any supervision from any officer aboard the ship (R-100).

STATEMENT OF QUESTIONS INVOLVED

1. Whether the trial court committed reversible error in granting the motion of the defendant for a dismissal of this cause at the conclusion of the plaintiff's on the grounds of insufficiency of evidence.

2. Whether the trial court committed reversible error by denying plaintiff's motion for a new trial and entering and signing a Judgment and Order of Involuntary Dismissal.

SPECIFICATION OF ERRORS

1. The trial court erred in involuntarily dismissing the cause at the close of plaintiff's case, since there were questions of fact regarding the existence of negligence which should have gone to the jury.

2. The court failed to apply the liberal construction

to the definition of "Negligence," as required by the Jones Act.

3. The court failed to apply the Doctrine of Comparative Negligence in viewing the facts.

4. The court failed to view the evidence in the light most favorable to the party against whom the motion was made and to give the advantage of every fair and reasonable intendment that the evidence could justify.

SUMMARY OF ARGUMENT

The evidence before the court established a prima facie case and the court erred in withdrawing the case from the jury. This is especially true when the evidence is taken in the light most favorable to the appellant and exercising every favorable inference in his behalf.

The evidence clearly shows that appellant was injured as a result of failure of appellee to provide him with a safe place to work. The unsafe condition was the fact that the appellant was required to work in a limited area of three feet, between the pallet board in front of him and the tiers of salmon cases behind him, since the man working on the after end of the pallet board had only five feet behind him to a sheer drop of 12 to 20 feet.

The evidence is uncontradicted that three of appellant's four fellow workers were cannery workers and inexperienced in cargo stowing and that they mistakenly and without warning swung the pallet board in a new and unexpected direction, thereby injuring appellant. Further, the evidence is undisputed that no

officer was present supervising the work at the time of the injury.

The District Court failed in its obligation to let the case go to the jury, unless there was an absence of pleading or proof in support of appellant's case. There were questions of fact upon which reasonable men could differ. Such questions of fact had to be determined by the jury and the court erred in dismissing the action and weighing the facts, itself.

Under the Jones Act, the doctrine of Comparative Negligence applied in this case. The court failed to apply this doctrine by which appellant might recover even though contributorily negligent. The court also failed to apply a liberal interpretation of the term "negligence," as required by the Jones Act.

ARGUMENT

I. Taken in the Light Most Favorable to Appellant, the Evidence Unquestionably Establishes a *Prima Facie* Case

The evidence presented by appellant presented a *prima facie* case. This is especially true when it is viewed in the light most favorable to the non-moving party, the appellant.

The trial court had an obligation to view the evidence in its most favorable light and to give the appellant the benefit of every inference and intendment, when it ruled on appellee's motion for a dismissal at the end of plaintiff-appellant's case. *National Alfalfa Dehydrating & Mill Co. v. Sorensen*, 220 F.2d 858-862 (8th Cir., 1955); *Burcham v. J. P. Stevens & Co.*, 209

F.2d 35, 37 (4th Cir., 1954); *Mandro v. Vibbert, et al.*, 170 F.2d 540, 541 (4th Cir., 1948).

The last cited case dealt with a directed verdict, rather than with a judgment of involuntary dismissal as in this case; however, the same rules for viewing the evidence apply. In that case the court said:

“It is well to recall the settled rule that in considering a motion for a directed verdict the evidence must be considered in its aspect most favorable to the party against whom the motion is made, with every fair and reasonable inference which the evidence justifies. *Gunning v. Cooley*, 281 U.S. 90, 94, 74 L.Ed. 720; *Myers v. American Well Works*, 114 F.2d 252, Certiorari denied 313 U.S. 563.”

On a demurrer to the evidence the same rule applies. *Chesapeake & Ohio Railway Co. v. Martin*, 283 U.S. 209, 75 L.Ed. 1983 (1931). In the *Myers* case, *supra*, it is pointed out that the reviewing court also has an obligation to view the evidence at its strongest in behalf of the plaintiff.

When viewed in such a light, it is abundantly clear that the evidence proves the negligence of the appellee in the following three respects:

(1) Appellee failed to provide appellant with a safe place in which to work.

(2) Appellee failed to provide appellant with competent co-employees, and

(3) There was no supervision of the work going on at the time appellant was injured.

A. The evidence shows appellant was injured as a result of appellee's negligence in not providing him a safe place to work

Appellant was injured because he was forced to work in severely confined quarters where there were the triple hazards of a sheer drop of from 12 to 20 feet, a large swinging pallet board loaded with 1700 pounds of canned salmon, and an escape area of less than 3 feet behind him.

The salmon was lowered in to the hold on a pallet board loaded with 34 cases of salmon, weighing 1700 lbs., and the men would catch ahold of the board and swing it near the position where they were required to stack the cases. Appellant was one of a group of five men working on the port side of the vessel. The area in which these men could work was dangerously confined and cramped, due to the presence of rows of stacked salmon cases on the forward and port side and of a 12 to 20-foot sheer drop-off to the rear. The pallet boards were about 5 by 6 feet in size and when a board was in the working area, the appellant had only 1½ to 3 feet between the board and the cases of salmon stacked forward, in which to stand. The man at the other end of the board, standing at the rear, had only about four feet between the board and the sheer drop-off. Witness Raymond Perry, in regard to this condition, said: "You see there is a sheer drop-off, there, of about 20 feet by the bulkhead. It isn't safe for too many men to be on the side I was on" (R. 188).

Since the boards came down into the hold in a swinging manner, it was difficult for the men to stay out of their way, due to this limited working space.

As the board in question came down, in a swinging manner, appellant was against the cases of salmon stacked forward and as he stepped out to swing the board into unloading position, he was struck by the board when the other men swung the board in a counter-clockwise motion, contrary to their previous procedure. Appellant was unable to retreat to a position of safety, due to his confined position between the salmon cases behind him and the ladder to his left. Had the area been greater, appellant would not have been forced to work so close to the board and could have avoided it as it swung toward him. "They swung counter-clockwise, instead of clockwise, and knocked me back against the cases of salmon, just past the ladder. I could not jump out, because the ladder was on this side of me, and on the other side, I had too far to go" (R. 120).

B. The evidence shows appellant was injured as a result of appellee's negligence in failing to provide competent co-employees

The appellee failed to provide appellant with competent fellow workers. All except one of the group working with him were inexperienced in cargo loading. Ten men were sent into the hold to work cargo. Three of these men were members of the deck department, experienced and qualified in cargo handling. Four were members of the vessel's engine room department. The remaining three were cannery workers from ashore. A seaman named Raymond J. Perry was in charge of the hold as far as assigning men to the port or starboard side. He put two of the ship's sailors and three members of the Engine department on the starboard side. The

remaining five men were assigned the port side. One of the men, Perry, was an able-bodied seaman and qualified in cargo handling. Appellant was a member of the Engine department and unqualified in such work. The three other men were cannery workers from ashore, both inexperienced and totally unqualified in cargo loading. Putting all three of the cannery workers in one crew was in itself negligence and constituted a hazard to appellant working with them.

Throughout the morning prior to the injury, the men on the port side had been swinging the pallet boards in a clockwise motion and then under the hatch coaming. No agreement to do otherwise had been made, nor was there any indication that the direction of the swing would be changed. At about 8:45 A.M. a pallet board came down into the hold, swinging more than usual, and the other men swung it counter-clockwise, striking appellant in the stomach and knocking him against the cases of salmon stacked behind him. Appellant describes the occurrence, as follows:

“And in order to swing it clockwise, I was walking on the forward side, on the inboard corner, and we were swinging it clockwise in order so that I could get out from behind, because we had three tiers of salmon already behind, already loaded, and I was underneath the hatch coaming, and the other three fellows were in the wing, and one fellow would take the after side of the inboard corner, and we would swing the board clockwise, and then swing it aft, and at 8:30, when I got ahold of the board, I was between the board and these cases of salmon, and the fellows made a mistake and swung it counter-clockwise, and they caught me between

the cases of salmon and the board, and as soon as it happened, why, the fellow that was working on the same side of me was a ship's delegate for the Sailors' Department, and I reported to him to watch it, and be a little more careful because it hit me in the stomach with the board, and be a little more careful and we could go to work and swing it clockwise again, because there were three cannery workers in the hold, two young fellows and an old fellow who were inexperienced. They had never worked in the cargo before." (R. 95)

Had the men working with appellant been experienced, careful men, they would have been aware of his necessarily precarious position and would not have swung the pallet board counter-clockwise, thus catching him unaware and cutting off any feasible path of retreat. Failure of the appellant's fellow workers to give him any warning of the change in procedure was in itself negligence and sufficient for this case to go to the jury.

C. The evidence shows appellee negligently failed to properly superintend and supervise the work going on at the time appellant was injured

No officer of the vessel was present to inspect, supervise or superintend the loading operation where appellant was working. None of the individuals in the hold were given instructions by any superior officer as to how their work was to be accomplished. Three of the men were totally inexperienced. Four were members of the Engine Department. Perry, an able-bodied seaman, was forced to go about directing the operation as best he could.

A qualified officer could have seen the danger of three cannery workers working on the same pallet board. He should have recognized the undue hazard of the sheer drop-off to the rear of the loading area and ordered a safety net or other protective device be installed. Had proper instructions in procedure under the conditions existing been given to the men in the hold, the accident could have been prevented.

The vessel has an obligation to provide a safe place in which the men can work. It must provide the men with competent co-employees. It is liable for injuries resulting from the incompetence or negligence of any worker. Its officers have a duty to inspect and supervise to prevent injury, due to an unsafe condition or the negligence of incapable workers. No such inspection was made here. Supervision was not given. As a result, the appellant was seriously injured.

It was for the jury to say in this case whether or not there was negligence and a resultant injury. Surely, there is ample evidence upon which they could find negligence. They could have found that defendant was negligent in any one of the three respects detailed above. For the trial court to weigh the evidence and dismiss the case without going to the jury, was clearly error.

II. Under the Evidence the District Court Was Not Justified in Withdrawing the Case from the Jury and Dismissing It

- A. There were questions of fact concerning the negligence of the appellee upon which reasonable men might differ and which should have been left for the jury to decide.

There were numerous questions of fact concerning negligence upon which reasonable minds might differ. These questions of fact have been set forth at length in section one of this argument. It is clearly the province of the jury to weigh such facts and determine whether there was negligence. The following opinion aptly sets forth the undisputable law which should govern this case:

“The courts are constantly urged in cases of this character to substitute their judgment for that of the jury on questions of fact; and the seductive argument is made that a conclusion of fact which appears to the court to be reasonable is so clear that reasonable men could reach no other. If this sort of reasoning is allowed to prevail, however, it means that the courts are substituting their judgment for that of the jury on fact questions in violation of the constitutional requirement. Where there is a determinative fact in a case which is either admitted or established by evidence so conclusive that reasonable men could entertain no doubt with regard to it, the court should, of course, direct a verdict as a matter of law; but this does not mean that the court should direct a verdict on a weighing of the evidence or on a decision as to what inferences to be drawn therefrom are the more reasonable. Questions of negligence or con-

tributory negligence are ordinarily questions of fact involving the application of the rule of the reasonably prudent man to the facts of the case, and they are not to be decided by applying "rules of thumb" to the evidentiary facts and treating as conclusions of law what are in reality conclusions of fact. As was well said by Mr. Justice Lamar in *Grand Trunk Ry. Co. v. Ives*, 144 U.S. 408, 417, 12 S.Ct. 679, 36 L.Ed. 485, quoted with approval by Chief Justice Fuller in *Baltimore & O. R. Co. v. Griffith*, 159 U.S. 603, 611, 16 S.Ct. 105, 40 L.Ed. 274, by Mr. Justice Harlan in *Texas & Pac. R. Co. v. Gentry*, 163 U.S. 353, 368, 16 S.Ct. 1104, 41 L.Ed. 186, and by this court in *Waid v. Chesapeake & O. R. Co.*, 4 Cir., 14 F.2d 90, 93:

"There is no fixed standard in the law by which a court is enabled to arbitrarily say in every case what conduct shall be considered reasonable and prudent, and what shall constitute ordinary care, under any and all circumstances. The terms "ordinary care," "reasonable prudence," and such like terms, as applied to the conduct and affairs of men, have a relative significance, and cannot be arbitrarily defined. What may be deemed ordinary care in one case, may under different surroundings and circumstances, be gross negligence. The policy of the law has relegated the determination of such questions to the jury, under proper instructions from the court. It is their province to note the special circumstances and surroundings of each particular case, and then say whether the conduct of the parties in that case was such as would be expected of reasonable, prudent men, under a similar state of affairs. When a given state of facts is such that reasonable men may fairly differ upon the question as to whether there was negligence or

not, the determination of the matter is for the jury. It is only where the facts are such that all reasonable men must draw the same conclusion from them that the question of negligence is ever considered as one of law for the court.' ” *Burcham v. J. R. Stevens & Co.*, 209 F.2d 35, 38 (4th Cir., 1954)

The court in this case entered a judgment of dismissal at the close of appellant’s case. This was based upon the court’s conclusion that the evidence did not prove negligence. In so ruling the court acted as the weigher of the facts and deprived appellant of his right to have the case tried by a jury. In relation to its granting appellee’s motion for dismissal, the court said:

“I don’t believe the court can assume from the evidence here that the circumstances were such—place of work such that in and of itself it constituted an unsafe place to work. . . .

“There is no evidence, as I indicated in the question of Counsel, as to what any custom may be or practice may be. I think by the very nature of the work—load and pile salmon, or whatever it may be, and stack it up—and the nature of the work itself may involve, of course, dangers that are incident and a part of the work but I can’t see that it isn’t a situation where the circumstances—where the doctrine of *res ipsa loquitur* applies, and there isn’t any evidence that I think would justify letting the case go to the jury for a finding on that matter.

“As to how this happened, it is true enough the pallet board came down and was in a swinging motion (183) and my notes indicate that the plaintiff grabbed the line to steady it, but just how it happened to swing in to him, or towards him, is unclear. The fact that the cannery workers may

have been inexperienced in and of itself, I don't think, is a ground of negligence without some showing, clearer showing or some showing, as to what they did." (R-230)

The court indicated it had weighed the evidence and had reached the conclusion that no negligence existed, which is precisely the function intended for the jury. If there were any facts which were not clear to the court those were the very facts which the court should have allowed the jury to consider and clarify. The court's opinion showed that it did not believe there was any evidence as to what the inexperienced cannery workers did that injured the appellant. There is abundant evidence in the record that the swinging of the pallet board in a counterclockwise direction caused the injury (R-94, 95, 120, 160). Who but the jury is to say that the inexperience of the men did not cause them to reverse the direction of the board contrary to the planned operation?

Where reasonable men could differ the facts are for the jury to determine. Most of the facts in this case are uncontradicted and it was for the jury to decide whether they met the standard for negligence. *American Fidelity & Casualty Company v. Drexler*, 220 F.2d 930, 932 (5th Cir.-1955), Moore's Federal Practice (2d Ed.) Vol. 5, pp. 2313-2316.

B. The court failed to use a liberal interpretation of “negligence” as required by the terms of the Jones Act.

This action was brought under the terms of the Jones Act, 41 Stat. 1007, 46 U.S.C. §688. The courts have always held that since the Jones Act is remedial and welfare legislation it is to be liberally construed in order to accomplish its beneficent purposes. *Cosmopolitan Shipping Co. v. McAllister*, 337 U.S. 783, 93 L.Ed. 1692 (1949).

Negligence under the terms of the Act is also very liberally construed by the courts in order to carry out the intent of the Act. Norris, *The Law of Seamen*, Vol. 2, p. 310 (1952). *Koehler v. Presque-Isle Transp. Co.*, 141 F.2d 490 (2d Cir.-1944)), says in this regard:

“An employer under the Jones Act is liable for negligence. *Jamison v. Encarnacion*, 281 U.S. 635, 74 L.Ed. 1082; and *Alpha S.S. Co. Corp. v. Cain*, 281 U.S. 642, 74 L.Ed. 1086, teach us that ‘negligence’ as used in that statute must be given a liberal interpretation. We think that it includes any knowing or careless breach of any obligation which the employer owes to the seaman. Among these obligations is that of seeing to the safety of the crew . . . the obligation of a shipowner to his seaman is substantially greater than that of an ordinary employer to employees.”

The court in this case obviously failed to exercise any liberality in considering the presence of negligence in this case. Rather, a narrow and harsh interpretation was used to find that no negligence had been proven. By so doing, the court, in effect, precluded the appellant from utilizing the beneficial effect of the Jones Act.

Had the Act been applied as intended the trial court would not have dismissed the action and the cause would have gone to the jury for determination.

C. The court failed to apply the doctrine of comparative negligence which was applicable under the Jones Act.

Contributory negligence is not an available defense or a barrier to a proceeding under the Jones Act. The doctrine of comparative negligence is applied to such cases.

“Although proof of negligence is an essential to recovery under the Jones Act, contributory negligence and assumption of risk are not available defenses. The Admiralty doctrine of comparative negligence applies.” *Jacob v. City of New York*, 315 U.S. 752, 755 (1942).

“The fact that the employee may have been guilty of contributory negligence shall not bar a recovery.” 45 U.S.C. 53, Sec. 3, Federal Employers Liability Act.

Since contributory negligence was not available as a defense, the action of the court in this case was all the more erroneous.

The jury could have found under the evidence that appellee was negligent on any or all of the three grounds outlined in this brief and that appellant was injured resultingly. There was no contributory negligence proven here, even had it been it would not have barred appellant's recovery. The trial court invaded the province of the jury and, acting as a weigher of the facts, dismissed the case.

CONCLUSION

WHEREFORE, for the aforesaid reasons, Appellant urges that the cause be *reversed* and *remanded* for a new trial.

Respectfully submitted,

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